IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
VICTORIA DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. Formosa Plastics Corporation, Texas, Formosa Plastics Corporation, Louisiana, Formosa Hydrocarbons, Inc., Defendants.	)	Civil Action No. 6:09-cv-00061

FIRST AMENDMENT TO CONSENT DECREE

FIRST AMENDMENT TO CONSENT DECREE

WHEREAS on September 29, 2009, Plaintiff the United States of America ("United States"), on behalf of the Environmental Protection Agency ("EPA"), filed a complaint in this action and contemporaneously lodged a Consent Decree between the United States and Defendants Formosa Plastics Corporation, Texas, Formosa Plastics Corporation, Louisiana, and Formosa Hydrocarbons Corporation;

WHEREAS on February 3, 2010, this Court entered the Consent Decree ("Consent Decree") that fully resolved the claims in the complaint;

WHEREAS the Consent Decree, *inter alia*, requires Formosa Plastics Corporation, Texas, and Formosa Hydrocarbons Corporation (collectively "FPC TX") to perform enhancements to the leak detection and repair ("LDAR") programs at their two facilities in Point Comfort, Texas ("Point Comfort Facilities");

WHEREAS, in 2011, pursuant to the reporting requirements of the Consent Decree, FPC TX notified EPA that FPC TX had failed to include in its LDAR program pieces of equipment from a section of the hydrocarbons process unit that should have been included under applicable regulations;

WHEREAS the Point Comfort Facilities have in excess of 400,000 pieces of LDAR-regulated equipment;

WHEREAS prior to the Lodging of this First Amendment, FPC TX developed a Scope of Work that is attached as Appendix G to this First Amendment;

WHEREAS, FPC TX developed this Scope of Work in order to retain a Third-Party LDAR contractor (different from its current LDAR services provider) to undertake a comprehensive review of the piping and instrumentation drawings ("P&IDs") of each process

unit covered by Appendix A of the Consent Decree for the Point Comfort Facilities ("Covered Process Units") and to perform a field verification of the P&IDs and the LDAR database of each Covered Process Unit in order to review the "in service" determination (*i.e.*, " in Volatile Organic Compound ("VOC") service" and/or "in Hazardous Air Pollutant ("HAP") service") of each line and to ensure that all components that are required to be included in the Point Comfort Facilities' LDAR Program are included and all components that are not required to be included are removed from the LDAR database;

WHEREAS the overall process identified in the preceding WHEREAS clause is termed the "Comprehensive First Amendment LDAR Evaluation" and, as described in Appendix G, is intended to be much more detailed and comprehensive than an audit;

WHEREAS the United States and FPC TX (the "Parties to the First Amendment") recognize, and the Court by entering this First Amendment finds, that this First Amendment has been negotiated at arm's length and in good faith, that it will avoid litigation between the Parties to the First Amendment, and that this First Amendment is fair, reasonable, and in the public interest;

NOW, THEREFORE, before the taking of any testimony, without the adjudication or admission of any issue of fact or law, and upon the consent and agreement of the Parties, it is hereby ADJUDGED, ORDERED, and DECREED as follows:

* * * *

1. The Consent Decree shall remain in full force and effect in accordance with its terms except that the new Definitions identified below in Paragraph 2 are added to Appendix A of the Consent Decree; the new Paragraphs numbered 37–40 below are added to Appendix A of

the Consent Decree; the new Paragraphs numbered 30A, 32A, 61A, and 61B below are added to the body of the Consent Decree; and new Appendices G and H, attached hereto, are added.

* * * *

DEFINITIONS TO BE ADDED TO APPENDIX A

2. The definitions in Appendix A are amended with respect to the Point Comfort Facilities to include the definitions set forth in the newly added Appendix G. These new definitions are found in both the "Definitions" section of Appendix G and in other locations in Appendix G.

* * * *

ADDITIONAL INJUNCTIVE RELIEF TO BE ADDED TO APPENDIX A

3. Appendix A is amended to add a new Subsection N which shall have the heading "**Subsection N (Additional Injunctive Relief)**." The following Paragraphs are added under that new Subsection:

"37. Comprehensive First Amendment LDAR Evaluation. FPC TX shall implement the Scope of Work set forth in Appendix G at the Point Comfort Facilities. FPC TX shall perform the actions in Appendix G that are assigned to it, shall use its Current LDAR Service Provider to perform the actions required by the Current LDAR Service Provider, and shall retain a Third-Party to perform the actions required by the Third-Party. FPC TX shall be solely responsible for ensuring that the work in Appendix G that must be performed by it, by its Current LDAR Service Provider and the Third-Party is undertaken consistent with Appendix G and in accordance with the schedule set forth in Paragraph 38.

"38. Schedule for Undertaking the Comprehensive First Amendment LDAR Evaluation.

a. Commencement. By no later than 60 days after the Date of Lodging of this First Amendment, FPC TX shall commence implementation of the Comprehensive First Amendment LDAR Evaluation set forth in Appendix G.

b. Completion. FPC TX shall perform the work required at each Covered Process Unit ("Covered Process Unit Evaluation") at the Point Comfort Facilities during the course of the Comprehensive First Amendment LDAR Evaluation with the goal of being comprehensive and thorough. With that goal in mind, FPC TX shall complete the

Comprehensive First Amendment LDAR Evaluation by no later than one year and 60 days after the Date of Lodging, unless, by no later than one year and 15 days after the Date of Lodging, FPC TX seeks approval from EPA Region 6 for an extension of the deadline. In seeking an extension, FPC TX shall provide specific and detailed reasons justifying the additional time. Unexpected costs shall not be a reason for seeking additional time. The request for an extension of time in this Subparagraph is distinct from a request under the *force majeure* provisions (Section VIII) of the Decree. Nothing in this Subparagraph prevents FPC TX from invoking *force majeure*, if applicable, for an extension of the deadline.

"39. Reports. Consistent with Step 6.2 in Appendix G, by no later than two weeks after completing each Covered Process Unit Evaluation, FPC TX shall submit a report to EPA Region 6 by certified mail that identifies, by Equipment type (*i.e.,* valve, connector, *etc.*), the number of pieces of Equipment within the Covered Process Unit that have been added to the LDAR program and the number that have been removed. This report shall be called the "Paragraph 39 Report" and each Paragraph 39 Report expressly shall identify that it is being submitted pursuant to Paragraph 39 of Appendix A of the First Amendment. Equipment that has been listed in a Paragraph 39 Report as having been added to the LDAR program will be subject to the stipulated penalties in Subparagraph 32A.b of this First Amendment.

"40. Certification. By signing this First Amendment, FPC TX certifies that, as of the date of its signature, and other than Equipment that FPC TX already has notified EPA of, it has no knowledge of any piece of Equipment at the Point Comfort Facilities that should be or should have been included in the LDAR Program but currently is not included. If, between the date of its signature and the Date Lodging of this First Amendment, FPC TX becomes aware of any piece of Equipment that should be or should have been included in its LDAR Program but is currently not included, FPC TX shall notify EPA Region 6 by electronic mail as soon as it has any such knowledge. Electronic notice shall be sent to moncrieffe.marcia@epa.gov and gibbs.jennifer@epa.gov. "

* * * *

STIPULATED PENALTIES

4. A new Paragraph is added in Section VII of the body of the Consent Decree as follows:

"30A. By no later than thirty (30) days after Entry of this First Amendment, FPC TX shall pay a penalty of $1,447,925 (One Million, Four-Hundred, Forty-Seven Thousand, Nine-Hundred and Twenty Five Dollars) to the United States in consideration of the resolution of liability set forth in Paragraph 61.A of this First Amendment. Payment shall be made as directed in Paragraph 9 of the Consent Decree."

5. New stipulated penalties are added to the first table in Paragraph 32 (*i.e.*, the table for "Noncompliance with Requirements of Enhanced Leak Detection and Repair Program (Appendix A)") as follows:

"32A. FPC TX shall be liable for stipulated penalties to the United States for the violations of this First Amendment set forth below.

Violation	**Stipulated Penalty**	
32A.a. For failure to timely complete the Comprehensive First Amendment LDAR Evaluation in accordance with the terms of Paragraph 37 of this First Amendment and Appendix G	Period of Delay Days 1 – 30 Days 31 – 60 Over 60 days	Penalty per Day $ 1000 $ 2000 $ 3000
32A.b. For each piece of Equipment that is listed in a Paragraph 39 Report that FPC TX failed to include in its LDAR Program that should have been included. (This penalty is in lieu of the stipulated penalties found in the final two rows of the stipulated penalty table on pages 13–16 of the main body of the Decree that is associated with "Noncompliance with Requirements of Enhanced Leak Detection and Repair Program (Appendix A)." The final two rows in question are located on page 16. For any pieces of Equipment other than those listed in a Paragraph 39 Report, the final two rows of the Table remain in full force and effect.)	$175 per piece of missed Equipment"	

* * * *

6. Two new paragraphs are added after Paragraph 61 in the body of the Consent Decree as follows:

"61A. Resolution of Liability. This First Amendment resolves the civil and stipulated penalty claims of the United States for the violations alleged against FPC TX in an EPA letter dated March 23, 2012, and for the violations reported by FPC TX to EPA in an April 5, 2012 letter. EPA's March 23, 2012 letter, the letters from FPC TX to EPA that EPA refers to in its March 23, 2012 letter, and FPC TX's April 5, 2012 letter are set forth in Appendix H of this First Amendment.

"61B. All references in the Consent Decree to Paragraph 61 shall be interpreted to include reference to Paragraph 61A."

SO ORDERED this 13th day of March 2013.

United States District Judge

Signature Page to First Amendment to Consent Decree in *U.S. v. Formosa Plastics Corporation, Texas, et al.*

Through its undersigned representatives, the party below consents to entry of the First Amendment to the Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7.

FOR THE UNITED STATES OF AMERICA

/s/ Ignacia S. Moreno
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Environment and Natural Resources Division
United States Department of Justice

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United States Attorney
Southern District of Texas

By: /s/ Daniel Hu
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Signature Page to First Amendment to Consent Decree in *U.S. v. Formosa Plastics Corporation, Texas, et al.*

Through its undersigned representatives, the party below consents to entry of the First Amendment to the Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

/s/ Cynthia Giles***
CYNTHIA GILES
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency
Washington, DC

*** Signed with permission.

Signature Page to First Amendment to Consent Decree in *U.S. v. Formosa Plastics Corporation, Texas, et al.*

Through its undersigned representatives, the party below consents to entry of the First Amendment to the Consent Decree, subject to the public notice and comment provisions of 28 C.F.R. § 50.7.

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGION 6

/s/ John Blevins ***
JOHN BLEVINS
Director
Compliance Assurance and
Enforcement Division

/s/ Marcia Elizabeth Moncrieffe ***
MARCIA ELIZABETH MONCRIEFFE
Assistant Regional Counsel
United States Environmental Protection Agency
Region 6
1445 Ross Ave, Suite 1200
Dallas, Texas 75202

*** Signed with permission.

Signature Page to First Amendment to Consent Decree in *U.S. v. Formosa Plastics Corporation, Texas, et al.*

Through its undersigned representative, the parties below consent to entry of the First Amendment to the Consent Decree.

FORMOSA PLASTICS CORPORATION, TEXAS,
FORMOSA HYDROCARBONS CORPORATION

/s/ Randall P. Smith ***
RANDALL P. SMITH
Vice President/General Manager
Formosa Plastics Corporation, Texas
Point Comfort, Texas

November 29, 2012
DATE

*** Signed with permission.

EXHIBIT G

Scope of Work to Perform FPC TX's Comprehensive First Amendment LDAR Evaluation

Overall Process: The overall process required by this Scope of Work shall be referred to as the "Comprehensive First Amendment LDAR Evaluation." As applied to a single "Covered Process Unit" (defined below), the process shall be referred to as the "Covered Process Unit Evaluation."

The Third-Party shall evaluate all piping and instrumentation diagrams ("P&IDs") from each Covered Process Unit at the Point Comfort, Texas facilities of Formosa Plastics Corporation, Texas, and Formosa Hydrocarbons Corporation (collectively FPC TX) to verify determinations of "in VOC service" or "not in VOC service" and/or "in organic HAP service" or "not in organic HAP service" as defined in applicable LDAR regulations.

The Third-Party also shall perform field verifications of the P&IDs and FPC TX's database by doing unit-by-unit walk-throughs to ensure that the P&IDs and current LDAR database accurately reflect the components in the field and that the components in the field accurately are reflected on the P&IDs and in the LDAR database. Any component that is in VOC service or in HAP service, as applicable, but not currently in the LDAR program will be added to the LDAR program. Any component that is in the LDAR program but should not be will be removed from the LDAR program.

By no later than two weeks after completion of the Covered Process Unit Evaluation for each Covered Process Unit, FPC TX shall send a report to EPA by certified mail describing the results of the evaluation. "Completion of the Covered Process Unit Evaluation" shall mean when Actions 1 through 5 (below) are complete for that Covered Process Unit. After addition to the LDAR program, such components will be first monitored during the next required periodic monitoring for that type of component in that service.

Purpose of the P&ID Review: The P&ID review portion of the Comprehensive First Amendment LDAR Evaluation Program has been developed in order to systematically challenge and evaluate FPC TX's affected LDAR Equipment determinations beyond:

- FPC TX's 2010 LDAR retagging effort, which relied on previously made historic determinations; and,
- The scope of a FPC TX's recent LDAR Audits, which were performed by looking at a statistically random sampling of compliance requirements, assessing compliance based on a "snap shot" approach, and generally not challenging previous, historic determinations made by Operational personnel regarding the regulatory status of Equipment.

Covered Process Units:

The FPC TX process units covered by this Scope of Work are the same as those in a February 2010 Consent Decree between FPC TX and the United States and are:

1. PP II
2. LLDPE
3. VCM
4. PVC
5. EDC

6. FHC
7. OL II
8. HDPE II
9. PP I
10. EG
11. OL I / PPU / GHU
12. Inland Traffic
13. Marine Traffic
14. HDPE I

Definitions:

"Current LDAR Service Provider" shall mean the firm or company that FPC TX uses for the duration of the work outlined in this Scope of Work to undertake routine, required LDAR functions (including but not limited to monitoring, database entry, instrument calibration, etc), at the Point Comfort, Texas facilities of FPC TX.

"Equipment":

For PEI, PEII, LLDPE, and PPII, affected "Equipment" shall include the following, as defined in Part 63 Subpart UU and as allowed by 63.2535(k): "Each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in regulated material service" (i.e., in HAP or in VOC service).

For VCM, EDC, GHU, EG, Marine Traffic, and affected parts of Inland Traffic, affected "Equipment" shall include the following, as defined in Part 63 Subpart H: "Each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver, and instrumentation system in organic hazardous air pollutant service..."

For the affected parts of OLI and OLII, affected "Equipment" shall include the following, as defined in Part 63 Subpart YY: "Each pump, compressor, agitator, pressure relief device, sampling collection system, open-ended valve or line, valve, connector, instrumentation system in organic hazardous air pollutant service..."

For the affected parts of PVC, affected "Equipment" shall include the following, as defined in Part 63 Subpart EEEE: "Each pump, valve, and sampling connection system used in organic liquids service at an OLD operation. Valve types include control, globe, gate, plug, and ball. Relief and check valves are excluded."

For the PVC Unit, affected "Equipment" shall include the following, as defined in Part 61 Subpart V: "Each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, surge control vessel, bottoms receiver in VHAP service..."

For PPI, PPU, FHC, and the affected parts of OLI and OLII, affected "Equipment" shall include the following, as defined in Part 60 Subpart VV: "Each pump, compressor, pressure relief device, sampling connection system, open-ended valve or line, valve, and flange or other connector in VOC service..."

"Third-Party" shall mean the company or firm retained by FHC TX to undertake the work required in Actions 2–4 below.

Actions Necessary to Perform the Comprehensive First Amendment LDAR Evaluation for Each Covered Process Unit

Action #1: FPC TX's Pre-Evaluation Assembly - FPC TX Operations shall assemble the following in preparation for each Covered Process Unit Evaluation (Third-Party does not have to perform these actions):

Step 1.1: Assemble all current color-coded P&IDs associated with the Covered Process Unit, including but not limited to those generated during the 2010 retagging effort. Ensure that the P&IDs are current by reviewing them alongside any process and/or equipment changes since the 2010 retagging effort, using MOC support. Update the color codes on each P&ID as necessary. (Hereafter, these updated, color-coded P&IDs shall be referred to as the "FPC TX First Amendment LDAR P&IDs.")

Step 1.2: Gather operational data for the speciation of fluids (liquid or gas) contained within or in contact with the affected Equipment, including support for a determination of whether the fluid is potentially equal to or less than 5% wt. HAP or 10% wt VOC.

Step 1.3: Assemble Equipment-specific process descriptions and CAA regulatory applicability, including any regulatory overlaps, into a regulatory matrix.

Action #2: Third-Party P&ID Review

Step 2.1: Review Operations' regulatory matrix from Step 1.3 to ensure it is current and accurate (to the extent possible at this Step).

Step 2.2: Using the FPC TX First Amendment LDAR P&IDs from Step 1.1 and the operational data from Step 1.2, review and confirm the regulatory status of each process stream (*e.g.*, "In VOC service," "In HAP service," "exempt," "nonregulated") in preparation for field verification. Make all necessary changes to reflect the confirmed regulatory status on the FPC TX First Amendment LDAR P&IDs. (Hereafter, both the FPC TX First Amendment LDAR P&IDs that the third-party does *not* need to revise and those that it *does* need to revise shall collectively be called the "3P First Amendment LDAR P&IDs.")

Step 2.3: Using the 3P First Amendment LDAR P&IDs from Step 2.2, review each P&ID to ensure the P&ID matches the regulatory matrix, including the regulatory status of each line (i.e., process stream). Make all necessary changes to the regulatory matrix.

Action #3: Third-Party Field Verification Process: P&IDs and LDAR Database (dB)

Step 3.1: Third-Party shall confirm the P&ID page number for each component in the LDAR dB.

Step 3.2: Third-Party teams (two people each) shall use the 3P First Amendment LDAR P&IDs from Step 2.2 to field verify affected Equipment. "Field verify" includes:

a) Compare 3P First Amendment LDAR P&IDs to what is in the field;

b) Compare what is in field to 3P First Amendment LDAR P&IDs; and,
c) Compare a) and b) to what is represented in LDAR dB.

Step 3.3: On a daily basis, Third-Party shall identify and summarize data conflicts into initial determinations (e.g., add or remove affected equipment to/from the LDAR dB; update 3P First Amendment LDAR P&IDs, etc.).

Action #4: Third-Party & FPC TX: Review Initial Evaluation Findings, Make Final Determinations and Hold Progress Meetings

Step 4.1: On at least a weekly basis, in a meeting with FPC TX Operations and LDAR Coordinator, Third-Party shall review data conflicts from Step 3.3 and then finalize determinations. All necessary changes to the 3P First Amendment LDAR P&IDs, and regulatory matrix shall be made by the Third Party and all the necessary changes to the LDAR dB shall be made by the Current LDAR Services Provider, including adding new components and removing components that no longer are in service.

Step 4.2: Third-Party shall meet with FPC TX LDAR Coordinator at least every other week to discuss progress and schedule.

Action #5: If necessary: FPC TX or Current LDAR Services Provider Prepare dB/Log Sheet and Install LDAR Identification Tags for any New Components Found; Get New Components into LDAR Database for Monitoring

Step 5.1: FPC TX or its Current LDAR Services Provider shall populate a database/log sheet for each piece of affected Equipment that needs to be added to the LDAR dB. Data elements necessary for finding and monitoring regulated components include but are not limited to (Third-Party does not have to perform these actions):

- Unit
- Process Area
- Equipment
- Tag Number
- Component Type (e.g. valve, pressure relief device, etc.)
- Size
- Service Type
- Applicable Rule (if overlap; determine which supersedes)
- Location Description
- Accessibility (difficult to monitor? unsafe to monitor?)
- Process Stream Identification
- Process and instrumentation drawing (P&ID) Number
- Safety equipment necessary to perform inspections

In addition, in the LDAR dB, a note should be added that states the date when the Equipment was put in service and the fact (including date) that the Equipment was discovered under this Comprehensive First Amendment LDAR Evaluation Program.

Step 5.2: Begin monitoring newly affected Equipment at the next required monitoring period at the monitoring frequency and leak definition level specified in either the February 2010 Consent Decree or the appropriate LDAR regulation (whichever is applicable) for that type of component.

Action #6: FPC TX: Submit Reports to EPA

Step 6.1: FPC TX LDAR Coordinator shall maintain a record of the start and end dates for each Covered Process Unit Evaluation and other data associated with the Evaluations.

Step 6.2: By no later than two weeks after the completion of each Covered Process Unit Evaluation (i.e., completion of Actions 1 through 5), FPC TX shall submit a report that identifies all Equipment added to the LDAR program, all Equipment removed from the LDAR program, and all other material modifications to the LDAR database to EPA by certified mail. FPC TX shall certify each report it submits pursuant to the requirements of Paragraph 27 of the February 2010 Consent Decree.

EXHIBIT H

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

March 23, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7010 2780 0002 4357 3902

Formosa Plastics Corporation, Texas
201 Formosa Drive
Point Comfort, TX 77978
Attn: Plant Manager

Formosa Hydrocarbons Company, Inc.
P.O. Box 769
103 Fannin Road
Point Comfort, TX 77978

Robert T. Stewart
Kelly Hart & Hallman, LP
301 Congress Avenue, Suite 2000
Austin, TX 78701

Re: United States v. Formosa Plastics Corporation, Texas, et al.
Civil Action No. 6:09-cv-00061
DEMAND FOR STIPULATED PENALTIES

Dear Sir or Madam:

Pursuant to Paragraph 30 of the Consent Decree (Consent Decree) entered in the above-referenced matter, the United States Environmental Protection Agency (EPA) hereby demands payment from Formosa Plastics Corporation, Texas and Formosa Hydrocarbons, Inc. of stipulated penalties for violations of certain requirements of the Consent Decree. These violations involve Formosa Plastics Corporation, Texas, and Formosa Hydrocarbons, Inc. located in Point Comfort, Texas (Formosa). See Consent Decree at ¶ 30.

The Consent Decree requires Formosa to undertake enhancements to the Leak Detection and Repair (LDAR) program. See id., Appendix A. Under Paragraph 32 of the Consent Decree, Formosa is liable for stipulated penalties of $175 for each component that Formosa failed to timely include in its LDAR program. To date, Formosa has failed to timely include 8,191 components. Under Paragraph 32 of the Consent Decree, Formosa is also liable for stipulated penalties of $100 per piece of equipment when the proper leak definition is not implemented within the required time frame. To date, Formosa has failed to monitor 145 connectors at the required leak definition of 250 ppm VOC. Under the terms of the Consent Decree, as described below, the total amount of stipulated penalties due is $1,447,925. The EPA, therefore, makes a demand for $1,447,925.

* * * *

Re: Formosa Plastics Corporation
Demand for Stipulated Penalties

Stipulated Penalties as Calculated under the Terms of the Decree:
Paragraph 32 Penalties

Failure to add existing Covered Equipment to the LDAR Program. Appendix A, Subsection J of this Consent Decree required Formosa to complete an initial LDAR audit of the Point Comfort facility by no later than April 29, 2010. Formosa retained ERM Consulting to conduct the audit and it was completed in a timely manner. The third party audit report notes that, of approximately 5,000 components that were visually inspected during the audit, 104 components were observed that were untagged and that Formosa confirmed had not been included in the LDAR program. Formosa's corrective action was to re-survey the facility to identify, tag, document and monitor fugitive piping components in light liquid or gas/vapor service in accordance with the facility's LDAR program. Formosa also conducted an audit of analyzer tags in NSPS VV service, and included any equipment that was untagged in its LDAR program. Mr. Randy White certified in the September 29, 2010, submittal that "all equipment at the Facility that is regulated under a federal, state, or local leak detection and repair program has been identified and included in the Facility's LDAR program." These components are not the subject of this stipulated penalty demand.

After the initial audit, however, in correspondence dated August 31, 2011, November 2, 2011, January 5, 2012, and February 14, 2012, Formosa reported that it discovered that 8,191 components had not been added to the LDAR program within one year of the Date of Lodging as follows:

No. of Components	Source of Information
11 flanges	Formosa's letter dated August 31, 2011
1,439 valves	Formosa's letters dated November 2, 2011, January 5, 2012, and February 14, 2012
6,712 connectors	Formosa's letters dated November 2, 2011, January 5, 2012, and February 14, 2012
3 pumps	Formosa's letter dated November 2, 2011
24 pressure relief valves	Formosa's letter dated November 2, 2011
2 compressors	Formosa's letter dated November 2, 2011
TOTAL:	**8,191 components**

Re: Formosa Plastics Corporation
Demand for Stipulated Penalties

Paragraph 32 of the Consent Decree states that "For failure to add existing Covered Equipment to the LDAR Program pursuant to Appendix A . . . if Defendant determines (either on its own or through a third-party audit) that it has, by no later than one year after the Date of Lodging, failed to include any Existing Covered Equipment in its LDAR program, Defendant shall pay $175 per piece of Covered Equipment that it failed to include." Formosa did not timely include 8,191 components in its LDAR program, and is liable for stipulated penalties of $1,433,425 (8,191 x $175).

Failure to Implement Internal Leak Definitions. Appendix A, Subsection C of this Consent Decree required Formosa to implement a leak definition for connectors in the Formosa Hydrocarbons unit by no later than 18 months after Date of Lodging. The Date of Lodging was September 29, 2009, and, therefore, the lower leak definition should have been implemented by March 29, 2011. Seven months later, on November 1, 2011, Formosa discovered that the Formosa Hydrocarbons Unit's affected connectors, which were monitored within 18 months of the Date of Lodging, were actually monitored with an internal leak definition of 500 ppm VOC, rather than 250 ppm due to a misunderstanding of a Formosa Hydrocarbons exception within the CD. Of the approximately 18,000 affected connectors monitored within 18 months of the Date of Lodging, 145 connectors were impacted by the misunderstood leak definition for the seven month period.

In correspondence dated November 15, 2011, Formosa reported that it failed to monitor 145 connectors at the required leak definition of 250 ppm VOC. Paragraph 32 states that "For failure to implement the internal leak definitions as required in Appendix A, Subsection C, paragraph 4," Formosa is required to pay stipulated penalties of "$100 per component, but not greater than $25,000 per month per Covered Process Unit." Formosa did not monitor the 145 connectors at the required leak definition of 250 ppm VOC for a period of seven months, and is liable for a substantial stipulated penalty. However, in this one instance, EPA has decided to demand a one-time stipulated penalty in the amount of $14,500 (145 x $100), based on the regulatory requirement of annual monitoring of connectors as stated in Appendix A, Subsection D of the CD.

* * * *

Under Paragraph 39, payment of $1,447,925 must be made in accordance with the provisions of Paragraph 9 of the Consent Decree, which in turn requires the U.S. Attorney's Office for the Southern District of Texas to issue EFT instructions to Formosa for payment of $1,447,925. Under Paragraph 35 of the Consent Decree, Formosa must pay these stipulated penalties within 30 days of receiving this written demand unless it invokes the dispute resolution provisions of the Decree.

The EPA is not aware of any basis upon which Formosa may successfully defend the demand made in this letter. EPA, therefore, also requests Formosa to notify the EPA as soon as possible, but no later than 30 days after its receipt of this letter, if it does not intend to invoke dispute resolution. Upon receipt of that notice, EPA will have the U.S. Attorney's Office prepare the EFT instructions and will arrange to provide these instructions to Formosa.

Re: Formosa Plastics Corporation
Demand for Stipulated Penalties

Thank you for your prompt attention to this matter.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

cc: Scott M. Cernich, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

Bernadette M. Rappold, Director
Special Litigation and Projects Division
Office of Civil Enforcement
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U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

A/4/EN

Mccl8425457

Formosa Plastics

Formosa Plastics Corporation, America
201 Formosa Drive • P.O. Box 700
Point Comfort, TX 77978
Telephone: (361) 987-7000
Fax: (361) 987-2363

RECEIVE
SEP 6 - 2011
Air/Toxics & Inspection Coordination Branch
6EN-A

August 31, 2011

Certified Mail: 7008 1830 0000 9417 0154

Associate Director, Air/Toxics and Inspection Coordination Branch (6EN-A)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Subject: Consent Decree Between U.S. Environmental Protection Agency and Formosa
Civil Action No. 6:09-cv-00061

Dear Madam and Sirs:

In accordance with Section VI, Paragraph 23.b. of the subject Consent Decree, Formosa Plastics Corporation, Texas is hereby providing timely notice of a noncompliance with Appendix A of the Decree. It was discovered that Existing Covered Equipment was not included in the facility-wide Leak Detection and Repair (LDAR) program. This situation has been resolved.

Cause of Violation:
On August 17, 2011, FPC TX discovered eleven (11) flanges that had not been added to the LDAR program within one year of the Date of Lodging. While installing new equipment in the area, it was determined that the flanges were in VOC service and must be included in the LDAR program.

Corrective Actions Taken:
Upon discovery, the flanges were entered into the system and monitored per Method 21. The monitoring results showed that the flanges were not leaking.

Sincerely,

R. P. Smith
VP/General Manager
Formosa Plastics Corporation, Texas

cc: Certified Mail: 7008 1830 0000 9417 0161
Director, Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

Certified Mail: 7008 1830 0000 9417 0178
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08995

Certified Mail: 7008 1830 0000 9417 0185
Robert T. Stewart
Kelly Hart & Hallman LLP
301 Congress Avenue, Suite 2000
Austin, Texas 78701
Telephone: (512) 495-6400
FAX: (512) 495-6401

Cernich, Scott

Formosa Plastics

Formosa Plastics Corporation, America
201 Formosa Drive • P.O. Box 700
Point Comfort, TX 77978
Telephone: (361) 987-7000
Fax: (361) 987-2363

November 2, 2011

Certified Mail: 7008 1830 0000 9417 1205

Associate Director, Air/Toxics and Inspection Coordination Branch (6EN-A)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Subject: Consent Decree Between U.S. Environmental Protection Agency and Formosa
Civil Action No. 6:09-cv-00061

Dear Madam and Sirs:

In accordance with Section VI, Paragraph 23.b. of the subject Consent Decree, Formosa Plastics Corporation, Texas is hereby providing timely notice of a noncompliance with Appendix A of the Decree. It was discovered that Existing Covered Equipment was not included in the facility-wide Leak Detection and Repair (LDAR) program. This situation has been resolved.

Cause of Violation:
On October 19, 2011, FPC TX discovered that 1395 Valves, 6577 Connectors, 24 Pressure Relief Valves, 3 Pumps, and 2 Compressors had not been added to the LDAR program within one year of the Date of Lodging. While conducting inventory work related to the Green House Gas monitoring rules, it was discovered that this equipment was in VOC service and must be included in the LDAR Program. This area of the unit processes natural gas and was previously believed to be below the VOC content requirement for the LDAR regulations.

Corrective Actions Taken:
Upon discovery, the covered equipment was entered into the system and scheduled for monitoring per Method 21.

Sincerely,

for RPS

R. P. Smith
VP/General Manager
Formosa Plastics Corporation, Texas

Corr.
90-5-2-1-08995

cc: Certified Mail: 7008 1830 0000 9417 1212
Director, Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

Certified Mail: 7008 1830 0000 9417 1229
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08995

Certified Mail: 7008 1830 0000 9417 1236
Robert T. Stewart
Kelly Hart & Hallman LLP
301 Congress Avenue, Suite 2000
Austin, Texas 78701
Telephone: (512) 495-6400
FAX: (512) 495-6401

AI/AI/EN 1100189259577

Formosa Plastics

Formosa Plastics Corporation, America
201 Formosa Drive • P.O. Box 700
Point Comfort, TX 77978
Telephone: (361) 987-7000
Fax: (361) 987-2363

November 15, 2011

Certified Mail: 7008 1830 0000 9417 1120

Associate Director, Air/Toxics and Inspection Coordination Branch (6EN-A)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Subject: Consent Decree Between U.S. Environmental Protection Agency and Formosa
Civil Action No. 6:09-cv-00061

Dear Madam and Sirs:

In accordance with Section VI, Paragraph 23.b. of the subject Consent Decree, Formosa Plastics Corporation, Texas is hereby providing timely notice of a noncompliance with Appendix A of the Decree. It was discovered that an incorrect internal leak definition was used when conducting Method 21 inspections of connectors. This situation has been resolved.

Cause of Violation:
On November 1, 2011, FPC TX discovered that the FHC (Formosa Hydrocarbons) Unit's affected connectors, which were monitored within 18 months of the Date of Lodging, were actually monitored with an internal leak definition of 500 ppm VOC, rather than 250 ppm due to a misunderstanding of an FHC exception within the applicable Consent Decree Subsection. This discovery indicated that of the approximately 18,000 affected connectors monitored within 18 months of the Date of Lodging, 145 connectors were impacted by the misunderstood leak definition.

Corrective Actions Taken:
The internal leak definition for connectors in FHC is set at 250 ppm, and all subsequent monitoring conducted in 2011 used this definition.

Sincerely,

R. P. Smith
VP/General Manager
Formosa Plastics Corporation, Texas

cc: Certified Mail: 7008 1830 0000 9417 1137
Director, Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

Certified Mail: 7008 1830 0000 9417 1144
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08995

Certified Mail: 7008 1830 0000 9417 1151
Robert T. Stewart
Kelly Hart & Hallman LLP
301 Congress Avenue, Suite 2000
Austin, Texas 78701
Telephone: (512) 495-6400
FAX: (512) 495-6401

A/AI/EN 11001892595

Formosa Plastics

Formosa Plastics Corporation, America
201 Formosa Drive • P.O. Box 700
Point Comfort, TX 77978
Telephone: (361) 987-7000
Fax: (361) 987-2363

January 5, 2012

RECEIVE
JAN 9
Air/Toxics & Inspection Coordination Branch 6EN-A

Certified Mail: 7008 1830 000 9417 1441

Associate Director, Air/Toxics and Inspection Coordination Branch (6EN-A)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Subject: Consent Decree Between U.S. Environmental Protection Agency and Formosa
Civil Action No. 6:09-cv-00061

Dear Madam and Sirs:

In accordance with Section VI, Paragraph 23.b. of the subject Consent Decree, Formosa Plastics Corporation, Texas is hereby providing timely notice of a noncompliance with Appendix A of the Decree. It was discovered that Existing Covered Equipment was not included in the facility-wide Leak Detection and Repair (LDAR) program. This situation has been resolved.

Cause of Violation:
On December 19, 2011, FPC TX discovered that 9 Valves and 29 Connectors had not been added to the LDAR program within one year of the Date of Lodging. While conducting routine inventory maintenance activities, it was discovered that this VOC equipment was not in the LDAR program. The affected equipment was not identified by the operating department as being in VOC service when the LDAR tagging was previously completed.

Corrective Actions Taken:
Upon discovery, the covered equipment was added to the LDAR system and monitored as required per Method 21.

Sincerely,

R. P. Smith
VP/General Manager
Formosa Plastics Corporation, Texas

cc: Certified Mail: 7008 1830 0000 9417 1458
Director, Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

Certified Mail: 7008 1830 0000 9417 1465
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08995

Certified Mail: 7008 1830 0000 9417 1885
Robert T. Stewart
Kelly Hart & Hallman LLP
301 Congress Avenue, Suite 2000
Austin, Texas 78701
Telephone: (512) 495-6400
FAX: (512) 495-6401

Cernich, Scott

Formosa Plastics

Formosa Plastics Corporation, America
201 Formosa Drive • P.O. Box 700
Point Comfort, TX 77978
Telephone: (361) 987-7000
Fax: (361) 987-2363

February 14, 2012

Certified Mail: 7008 1830 0000 9417 1908

Associate Director, Air/Toxics and Inspection Coordination Branch (6EN-A)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Subject: Consent Decree Between U.S. Environmental Protection Agency and Formosa
Civil Action No. 6:09-cv-00061

Dear Madam and Sirs:

In accordance with Section VI, Paragraph 23.b. of the subject Consent Decree, Formosa Plastics Corporation, Texas is hereby providing timely notice of a noncompliance with Appendix A of the Decree. It was discovered that Existing Covered Equipment was not included in the facility-wide Leak Detection and Repair (LDAR) program. This situation has been resolved.

Cause of Violation:
On January 31, 2012, FPC TX discovered that 35 Valves and 106 Connectors had not been added to the LDAR program within one year of the Date of Lodging. While conducting routine inventory maintenance activities, it was discovered that this VOC equipment was not in the LDAR program. The equipment had been included in the required AVO inspections, and there was no indication of any leaks.

Corrective Actions Taken:
Upon discovery, the covered equipment was added to the LDAR system and monitored as required per Method 21 with no leaks found.

Sincerely,

R. P. Smith
VP/General Manager
Formosa Plastics Corporation, Texas

Corr.

90-5-2-1-08995

cc: Certified Mail: 7008 1830 0000 9417 1915
Director, Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

Certified Mail: 7008 1830 0000 9417 1922
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08995

Certified Mail: 7008 1830 0000 9417 1939
Robert T. Stewart
Kelly Hart & Hallman LLP
301 Congress Avenue, Suite 2000
Austin, Texas 78701
Telephone: (512) 495-6400
FAX: (512) 495-6401

N\/.+\/2N 7/14 C(18425?

Formosa Plastics

April 5, 2012

Formosa Plastics Corporation, Ameri
201 Formosa Drive • P.O. Box 700
Point Comfort, TX 77978
Telephone: (361) 987-7000
Fax: (361) 987-2363

RECEI\
APR - 9 2
.../Toxics & Ins
Coordination B
6EN-A

Certified Mail: 7011 0110 0000 1782 5147

Associate Director, Air/Toxics and Inspection Coordination Branch (6EN-A)
Compliance Assurance and Enforcement Division
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202

Subject: Consent Decree Between U.S. Environmental Protection Agency and Formosa
Civil Action No. 6:09-cv-00061

Dear Madam and Sirs:

In accordance with Section VI, Paragraph 23.b. of the subject Consent Decree, Formosa Plastics Corporation, Texas is hereby providing timely notice of a noncompliance with Appendix A of the Decree. It was discovered that Existing Covered Equipment was not included in the facility-wide Leak Detection and Repair (LDAR) program. This situation has been resolved.

Cause of Violation:
On March 23, 2012, FPC TX discovered that 46 Valves, 115 Connectors, 1 PRV, and 2 Pumps had not been added to the LDAR program within one year of the Date of Lodging. During the Third-Party LDAR Audit required under Appendix A, Section J, Paragraph 26 of the subject Consent Decree, these components were identified as being in VOC service but were not in the LDAR Program. These missed components will be included in the Audit report that will be submitted at a later date.

On March 26, 2012, FPC TX discovered that 18 Valves and 44 Connectors had not been added to the LDAR program within one year of the Date of Lodging. While conducting routine inventory maintenance activities, it was discovered that this VOC equipment was not in the LDAR program.

Corrective Actions Taken:
Upon discovery, the covered equipment was added to the LDAR system and monitored as required per Method 21.

Sincerely,

R. P. Smith
VP/General Manager
Formosa Plastics Corporation, Texas

cc: Certified Mail: 7011 0110 0000 1782 5154
Director, Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

Certified Mail: 7011 0110 0000 1782 5161
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-2-1-08995

Certified Mail: 7011 0110 0000 1782 5178
Robert T. Stewart
Kelly Hart & Hallman LLP
301 Congress Avenue, Suite 2000
Austin, Texas 78701
Telephone: (512) 495-6400
FAX: (512) 495-6401

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

MAY 1 4 2013

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED: 7011 3500 0000 0359 6129

Formosa Plastics Corporation, Louisiana
P.O. Box 271
Baton Rouge, LA 70821-0271
Attn: Plant Manager

Robert T. Stewart
Kelly Hart & Hallman, LP
301 Congress Avenue, Suite 2000
Austin, TX 78701

Re: United States v. Formosa Plastics Corporation, Texas, et al.
Civil Action No. 6:09-cv-00061
DEMAND FOR STIPULATED PENALTIES

Dear Sir:

Pursuant to Paragraph 30 of the Consent Decree ("Consent Decree") entered in the above-referenced matter, the United States Environmental Protection Agency (EPA) hereby demands payment from Formosa Plastics Corporation, Louisiana of stipulated penalties for violations of certain requirements of the Consent Decree. These violations involve Formosa Plastics Corporation, Louisiana, located in Baton Rouge, Louisiana ("Formosa"). See Consent Decree at ¶ 30.

The Consent Decree requires Formosa to undertake enhancements to the Leak Detection and Repair ("LDAR") program. See id., Appendix A. Under Paragraph 32 of the Consent Decree, Formosa is liable for stipulated penalties of $175 for each component that Formosa failed to timely include in its LDAR program. To date, Formosa has failed to timely include 977 components. Under the terms of the Consent Decree, as described below, the total amount of stipulated penalties due is $170,975. The EPA therefore makes a demand for $170,975.

Stipulated Penalties as Calculated under the Terms of the Decree:
Paragraph 32 Penalties

Failure to add existing Covered Equipment to the LDAR Program. Appendix A, Subsection J of this Consent Decree required Formosa to complete an initial LDAR audit of the Louisiana facility by no later than April 29, 2010. Formosa retained ERM Consulting to conduct the audit and it was completed in a timely manner. The third party audit report did not identify

any untagged components or regulated components that did not appear to be included in the facility's LDAR program. Mr. Kelly Serio certified in the September 29, 2010 submittal that "all equipment at the Facility that is regulated under a federal, state, or local leak detection and repair program has been identified and included in the Facility's LDAR program".

After the initial audit, however, in correspondence dated October 2, 2012, October 19, 2012 (amending October 2, 2012 letter), November 7, 2012, and January 7, 2013, Formosa reported that it discovered that 977 components had not been added to the LDAR program within one year of the Date of Lodging as follows:

No. of Components	Source of Information
Inconclusive	Formosa's letter dated October 2, 2012
662	Formosa's letter dated October 19, 2012
282	Formosa's letter dated November 7, 2012
33	Formosa's letter dated January 7, 2013
TOTAL:	**977 components**

Paragraph 32 of the Consent Decree states that "For failure to add existing Covered Equipment to the LDAR Program pursuant to Appendix A . . . if Defendant determines (either on its own or through a third-party audit) that it has, by no later than one year after the Date of Lodging, failed to include any Existing Covered Equipment in its LDAR program, Defendant shall pay $175 per piece of Covered Equipment that it failed to include". Formosa did not timely include 977 components in its LDAR program, and is liable for stipulated penalties of $170,975 (977 x $175).

Under Paragraph 39, payment of $170,975 must be made in accordance with the provisions of Paragraph 9 of the Consent Decree, which in turn requires the US Attorney's Office for the Southern District of Texas to issue EFT instructions to Formosa for payment of $170,975.

Under Paragraph 35 of the Consent Decree, Formosa must pay these stipulated penalties within 30 days of receiving this written demand unless it invokes the dispute resolution provisions of the Decree. Therefore, prior to having the US Attorney's Office issue EFT instructions to Formosa, and consistent with the terms of the Consent Decree, if Formosa plans to contest any or all of the demand made in this letter, Formosa must invoke the resolution provisions of Section IX of the Decree as soon as possible, but no later than 30 days after its receipt of this letter. Paragraph 37 of the Consent Decree provides the terms under which stipulated penalties accrue and when they must be paid during dispute resolution.

Re: Formosa Plastics Corporation
Demand for Stipulated Penalties

The EPA is not aware of any basis upon which Formosa may successfully defend the demand made in this letter. EPA therefore also requests Formosa to notify the EPA as soon as possible but no later than 30 days after its receipt of this letter if it does not intend to invoke dispute resolution. Upon receipt of that notice, EPA will have the US Attorney's Office prepare the EFT instructions and will arrange to provide these instructions to Formosa. Thank you for your prompt attention to this matter.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

cc: Scott M. Cernich
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

Andrew R. Stewart
Acting Director, Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

NOV 19 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED: 7012 3050 0001 6500 4233

Formosa Plastics Corporation, Louisiana
P.O. Box 271
Baton Rouge, LA 70821-0271
Attn: Plant Manager

Robert T. Stewart
Kelly Hart & Hallman, LP
301 Congress Avenue, Suite 2000
Austin, TX 78701

Re: United States v. Formosa Plastics Corporation, Texas, et al.
Civil Action No. 6:09-cv-00061
DEMAND FOR STIPULATED PENALTIES

Dear Sir:

Pursuant to Paragraph 30 of the Consent Decree (Consent Decree) entered in the above-referenced matter, the United States Environmental Protection Agency (EPA) hereby demands payment of stipulated penalties from Formosa Plastics Corporation, Louisiana for violations of certain requirements of the Consent Decree. These violations involve Formosa Plastics Corporation, Louisiana, located in Baton Rouge, Louisiana (Formosa). See Consent Decree at ¶ 30.

The Consent Decree requires Formosa to undertake enhancements to the Leak Detection and Repair (LDAR) program. See id., Appendix A. Under Paragraph 32 of the Consent Decree, Formosa is liable for stipulated penalties of $175 for each component that Formosa failed to timely include in its LDAR program. Formosa has failed to timely include 227 components. Under the terms of the Consent Decree, as described below, the total amount of stipulated penalties due is $39,725. The EPA therefore makes a demand for $39,725.

* * * *

Stipulated Penalties as Calculated under the Terms of the Decree:
Paragraph 32 Penalties

Failure to add existing Covered Equipment to the LDAR Program. Appendix A, Subsection J of this Consent Decree required Formosa to complete an initial LDAR audit of the Louisiana facility by no later than April 29, 2010. Formosa retained ERM Consulting to conduct the audit and it was completed in a timely manner. The third party audit report did not identify any untagged components or regulated components that did not appear to be included in the facility's LDAR program. Mr. Kelly Serio certified in the September 29, 2010 submittal that "all equipment at the Facility that is regulated under a federal, state, or local leak detection and repair program has been identified and included in the Facility's LDAR program."

After the initial audit, however, in correspondence dated July 5, 2013, Formosa reported that it discovered 227 components had not been added to the LDAR program within one year of the Date of Lodging as follows:

No. of Components	Source of Information
227	Formosa's letter dated July 5, 2013

TOTAL: 227 components

Paragraph 32 of the Consent Decree states that "For failure to add existing Covered Equipment to the LDAR Program pursuant to Appendix A . . . if Defendant determines (either on its own or through a third-party audit) that it has, by no later than one year after the Date of Lodging, failed to include any Existing Covered Equipment in its LDAR program, Defendant shall pay $175 per piece of Covered Equipment that it failed to include." Formosa did not timely include 227 components in its LDAR program, and is liable for stipulated penalties of $39,725 (227 x $175).

* * * *

Under Paragraph 39, payment of $39,725 must be made in accordance with the provisions of Paragraph 9 of the Consent Decree, which in turn requires the U.S. Attorney's Office for the Southern District of Texas to issue EFT instructions to Formosa for payment of $39,725.

Under Paragraph 35 of the Consent Decree, Formosa must pay these stipulated penalties within 30 days of receiving this written demand unless it invokes the dispute resolution provisions of the Consent Decree. Therefore, prior to having the U.S. Attorney's Office issue EFT instructions to Formosa, and consistent with the terms of the Consent Decree, if Formosa plans to contest any or all of the demand made in this letter, Formosa must invoke the resolution provisions of Section IX of the Decree as soon as possible but no later than 30 days after its receipt of this letter. Paragraph 37 of the Consent Decree provides the terms under which stipulated penalties accrue and when they must be paid during dispute resolution.

The EPA is not aware of any basis upon which Formosa may successfully defend the demand made in this letter. EPA therefore also requests Formosa to notify the EPA as soon as possible but no later than 30 days after its receipt of this letter if it does not intend to invoke dispute resolution. Upon receipt of that notice, EPA will have the U.S. Attorney's Office prepare the EFT instructions and will arrange to provide these instructions to Formosa.

Thank you for your prompt attention to this matter.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

cc: Scott M. Cernich, Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611, Ben Franklin Station
Washington, DC 20044-7611

Andrew R. Stewart, Acting Director
Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

ailalen 455983 v4

EPA United States Environmental Protection Agency

Region 6 Compliance Assurance and Enforcement Division

INSPECTION REPORT

Inspection Date(s):	7/22-7/24/2014		
Media:	Air		
Regulatory Program(s)	RMP		
Company Name:	**Formosa Plastics Corp., LA**		
Facility Name:	**Formosa Plastics Corp., USA**		
Facility Physical Location:	Gulf States Rd		
(city, state, zip code)	Baton Rouge, LA 70805		
Mailing address:	P.O. Box 271		
(city, state, zip code)	Baton Rouge, LA 70821		
County/Parish:	East Baton Rouge Parish		
Facility Contact:	Omer Wolff	Environmental Manager	
	Owolff@flbr.fpc.com		
FRS Number:	110000597444		
Identification/Permit Number:	RMP 1000 0013 2812		
Media Number:	2203300002		
NAICS:	325211		
SIC:			
Facility Representatives:	Omer Wolff	Environmental Manager	225-358-8511
	Harold Demmer	Environmental-Safety	225-356-8734
	Kelly Serio	Plant Manager	
EPA Inspectors:	Dominique Duplechain	6EN-AS	214-665-7484
	Samuel Tates	6EN-AS	214-665-2243
State Inspector(s):	None		

Metadata		
	Title:	Formosa Plastics Baton Rouge Plant Baton Rouge East Baton Rouge Parish LA
	Author:	US EPA Region 6 Compliance Assurance and Enforcement Division Dallas TX
	Subject:	Inspection Report Clean Air Act
	Keywords:	Risk Management Plan

EPA Lead Inspector Signature/Date	Dominique Duplechain	9.2.2014 Date
Supervisor Signature/Date	Samuel Tates	9-2-2014 Date

Section I - INTRODUCTION

PURPOSE OF THE INSPECTION

On July 22, 2014, Samuel Tates and I arrived at Formosa Plastics Corp., Louisiana for an announced Clean Air Act inspection. An email was sent to Mr. Kelly Serio on July 17, 2014, which informed him of my arrival. I met with Mr. Omer Wolff, Environmental Manager, Mr. Harold Demmer, Environmental-Safety Advisor, and Mr. Kelly Serio, Plant Manager. I presented my credentials to Mr. Serio and informed him that this was an EPA inspection to determine compliance with 40 CFR Subpart 68 – Chemical Accident Prevention Provisions. Mr. Serio indicated that he was not aware of my arrival and later discovered that he deleted the announcement email. An employee representative was invited to participate in the inspection. The facility does not have union representation.

FACILITY DESCRIPTION

Formosa Plastics, LA is a producer of basic industrial chemicals and materials. Chlorine, ethylene dichloride, anhydrous hydrogen chloride, and vinyl chloride are the major materials used and/or produced at the facility. The primary commodity produced at the facility is polyvinyl chloride resin. Polyvinyl chloride is used to manufacture food wrap, children's toys, medical devices, garden hoses, piping, vinyl siding, floor tiles, roofing shingles, electrical wiring insulation, furniture, clothing articles, automotive parts, etc. The facility is certified to ISO international quality and environmental management standards and employs approximately 219 employees and approximately 89 full-time contractors. The Baton Rouge plant consists of three operating units; two of which are covered under the Risk Management regulation. These are Polyvinyl Chloride (PVC) and Vinyl Chloride Monomer (VCM).

Section II – OBSERVATIONS

40 CFR Part 68- Chemical Accident Prevention Provisions
Subpart A-General
§68.12 General Requirements
Formosa submitted a single Risk Management Plan (RMP) with covered processes that are subject to Program 3 requirements. The last 5 year update was August 31, 2012. The regulated flammable substances that are above the threshold quantities identified in §68.130 are: vinyl chloride and propylene. The regulated toxic substances that are above the threshold quantities identified in §68.130 are: chloroform, anhydrous hydrogen chloride, and chlorine. As a facility with Program 3 processes, Formosa must develop and implement a management system, conduct a hazard assessment, implement the prevention requirements of §68.65 through §68.87, develop and implement an emergency response program, and submit the data elements from 68.175 in their RMP.

§68.15 Management
I reviewed Formosa's PSM/RMP organizational chart which appeared to assign departments to specific sections of the RMP and not by individuals by name or title to specific sections of the risk management program as required by §68.15(c). The chart recognizes Mr. Kelly Serio as the person with overall responsibility for implementing the requirements of the Risk Management Program.

Subpart B- Hazard Assessment
§68.20 Applicability

Formosa Plastics is a Program 3 stationary source subject to this part and is required to prepare a worst case release scenario analysis and complete the five year accident history.

§68.22 Offsite consequence analysis parameters
I reviewed the facility's RMP Comp scenario summary. In the analyses of the worst case and alternate scenarios Formosa utilized the parameters identified in the rule.

§68.25 Worst-case release scenario analysis.
For its flammable worst case scenario, Formosa used the release of the entire volume of their largest flammable containing vessel with no controls in calculation of their worst case scenario. For the toxics worst case scenario, Formosa used catastrophic rupture of the vessel with the largest quantity of a toxic chemical with the largest impact.

§68.28 Alternative release scenario analysis.
Formosa identified and analyzed at least one alternative release scenario for all regulated flammable substance held in a covered process that is more likely to occur than the worst case scenario. Formosa used the parameters defined in §68.22 to determine distance to the end point. No mitigation systems were considered. Formosa identified a toxic alternate scenario for each toxic identified in the RMP submittal.

§68.30 Defining offsite impacts—population.
Formosa did not provide documentation that indicated that population was estimated within a circle with its center at the point of the release and a radius determined by the distance to endpoint. The population was estimated using Landview 6 Census 2000 population estimator. Landview 6 software uses 2000 Census data. It appears Formosa did not use to most recent Census data to estimate the population potentially affected as required by §68.30(c). The population identified in the toxic worst case scenario was not estimated to two significant figures as required by §68.30(d).

§68.33 Defining offsite impacts—environment.
For the toxic worst case scenario, Formosa identified environmental receptors that could potentially be affected from the release. Formosa did not provide any maps or data that were used to identify environmental receptors within the distance to endpoint.

68.36 Review and update.
Formosa conducted its review and update of the off-site consequences analysis in August 2012.

68.39 Documentation.
Formosa did not provide any maps depicting the point of the release and a radius of distance to endpoint. Landview 6 output data was not provided. It appears that Formosa did not maintain documentation used to estimate population and environmental receptors as required by §68.39(e).

§68.42 Five year accident history
In the RMP submittal, Formosa indicated there were no accidental releases of a RMP covered substance held above a threshold quantity in a covered process that resulted in death, injury, or significant property damage onsite, or known offsite death, injury, evacuation, shelter in place, property damage, or environmental damage.

Subpart D-Program 3 Prevention Program

§68.65 Process Safety information
I reviewed the following process safety information: information pertaining to the hazards of substances in the processes, the equipment in the process, P&IDs, process descriptions of the RMP processes, electrical classification, block flow diagrams, and upper and lower limits. Although requested, Formosa could not provide the maximum intended inventory as required by §68.65(c)(1)(iii).

§68.67 Process Hazard Analysis
Electronic PHA's are readily available to all employees through Formosa's intranet. I reviewed the following PHAs: 2012 VCM and 2012 PVC. The PHA summary pages were exactly the same and still in draft form. The summary did not indicate the dates the studies were conducted or identify the methodology used (ie HAZOP, What-if, etc). The PHAs were performed by at least one individual knowledgeable in the process. Based on the worksheets, it appeared that the PHA team used HAZOP methodology to perform the assessment. PHAs addressed process hazards, previous incidents at sites other than the stationary source, facility siting and human factors. In the RMP submittal, hurricane is identified as a hazard that is addressed in the PHAs. The PHAs made references to rain or freezing hazards; however, hurricane was not identified. The PHAs referenced a global node to identify external factors which may have included hurricanes. I did not see the global node in the PHAs at the time of the inspection. It appears that Formosa did not identify a hurricane as a hazard in the 2012 PHAs as required by §68.67(c)(1). It appears that Formosa did not address incidents that occurred at the stationary source that had a likely potential for catastrophic consequences as required by §68.67(c)(2).

I reviewed the 2008 facility siting study conducted by Baker Risk which was referenced in the PHA summary. From the study, Formosa has a few high risk items remaining. The facility siting tracking sheet did not set a target date for outstanding action items as required by §68.67(e).

PHAs included recommended actions from the HAZOP study. Formosa maintains documentation that tracks the recommendations from each PHA; however, closed recommendations did not identify the action taken as required by §68.67(e). The PHA tracking sheet identified action items that were past the due date with no indication of an extension or updated target date as required by §68.67(e).

§68.69 Operating Procedures
I reviewed operating procedures from the PVC and VCM Units. Formosa had procedures in place for the operating phases identified within the rule. Normal and Temporary Operations could not be readily identified. It appears that Formosa did not list or reference safety and health considerations within each procedure as required by §68.69(a)(3). It appears that Formosa did not list or reference operating limits: consequences of deviation or steps required to correct or avoid deviation as required by §68.69(a)(2) within each operating procedure. Safe Upper and Lower limits were identified in the facility's Standard Operating Manual (SOM). Consequences of deviation and corrective action were addressed in Unit and Area Specific troubleshooting manuals. Safety and Health was addressed in the Unit Specific Safety and Health Manual.

Formosa has a procedure in place for the annual review of operating procedures. Formosa provided 2014 annual certifications for the following: PVC 100 Area SOP Manual (April 29, 2014); PVC 200 Area SOP Manual (April 29, 2014); PVC Area 300 Manual (May 13, 2014). See Follow Up.

I reviewed the following safe work practices: Flame Permitting Procedure, Hazardous Energy Control, Confined Space Permitting and Entry.

§68.71 Training
I met with Formosa's Document Control Officer. I reviewed training documentation for selected operators from the PVC and VCM units. Operator qualification included training that covered operating phases and were specific to the operator's unit. Training records identified safety and health training, as well as, safe work practices. The training records included unit specific training, safe work training, and safety and health. Operator training unit qualification training dates are included in Table 1. See Follow Up.

Table 1: Operator Unit Training

Operator	Course Title	Previous Date	Most Recent Date
Operator 1	PVC Loader Recert	1/27/2010	2/5/2013
Operator 1	Vinyl Loading Recert	4/14/2010	4/30/2013
Operator 2	PVC Loader Recert	12/6/2010	12/6/2013
Operator 2	Vinyl Loading Recert		9/25/2012
Operator 3	PVC Recovery Recert	5/27/2011	5/22/2014
Operator 3	PVC Dryer Recert	4/30/2010	4/23/2013
Operator 4	SOP Annual Recert		3/9/2013
Operator 5	V2 Recert	NA	2/19/2013
Operator 5	SOP Recert	NA	3/9/2013
Operator 6	V2 100/200 Recert	4/28/2009	3/13/2012
Operator 6	V2 300/400 Recert	12/31/2010	1/7/2014

§68.73 Mechanical Integrity
I reviewed inspection/test reports and procedures for pressure relief valves, tanks, pressure vessels, and pumps. The inspection/test reports were appropriately documented. Formosa provided a list of inspections that were extended beyond the initial due date. The inspections were extended according to Formosa's guidelines.

Vibration data from 2014 was reviewed for critical and non-critical pumps.

I reviewed training records for maintenance, instrumentation, and electrical employees. Training records included safety and health, as well as, procedures applicable to the employee's job task.

§68.75 Management of Change (MOC)
Formosa developed a MOC procedure. See Follow Up.

§68.77 Pre-startup review (PSSR)
I did a cursory review of the following PSSRs: 200 Area Furnace and 300 Area Expansion. See Follow Up. PSSR checklists were not filled out to completion and action items were not documented as closed prior to start-up as required by §68.77(b).

§68.79 Compliance audits
I reviewed the October 2011 PSM/RMP compliance audit report. On December 27, 2011, Formosa certified that it has evaluated compliance with the Program 3 requirements. The previous audit was not reviewed at the time of the inspection. See Follow Up.

The 2011 audit identified deficiencies that were observed during this inspection. An example of this is the maximum intended inventory. It appears that Formosa did not correct the deficiencies discovered in the 2011 compliance audit as required by §68.79(d).

§68.81 Incident Investigation
At the time of the inspection, incident reports were not reviewed. See Follow Up.

§68.83 Employee Participation
I reviewed the employee participation policy. Formosa's employee participation plan addressed employee participation for each Program 3 element. Employees participate in the development of PHAs and safety meetings.

§68.85 Hot work permit
I reviewed hot work permits from 2014. The permits identified the object on which hot work is performed and the date authorized for hot work. Formosa keeps hot work permits on file until completion of hot work activities. Hot work permits required the fire watch to be identified by name. Formosa did not consistently identify the fire watch by name on the reviewed permits as required by §68.69(d).

§68.87 Contractors
I reviewed Formosa's procedures for training and other requirements needed for facility access. Formosa provided the work contracts for Turner Industries and Vector Electric. The contracts did not provide information on the contractor's safety performance and programs. See Follow Up. Training records were provided for two Turner employees which included the following training: safety and health, job specific, safe work.

Subpart E-Emergency Response
§68.90 Applicability
Formosa employs individuals who respond to accidental releases. I met with Mr. Rusty Daigle, Safety Manager, to discuss the Emergency Response Program. I reviewed the Emergency Response Plan (ERP). The ERP which incorporates the Crisis Management Plan references medical treatment but does not identify what first aid is necessary for accidental human exposure as required by §68.95(a)(1)(ii). I reviewed quarterly sprinkler system inspections, annual preventative maintenance and pump inspections for fire trucks, monthly and annual fire hose inspection.

Formosa's Safety Procedure 9: Fire Fighting Equipment included the procedures on the maintenance and inspection of emergency response equipment.

The facility performs annual drills to test the effectiveness of the ERP. The ERP identified when changes were made in the past with sign off sheets. The facility did not provide a procedure to review and update the ERP and ensure that employees are informed of the changes as required by §68.95(a)(4).

Section III – AREAS OF CONCERN

1. 40 CFR 68.15: Formosa's PSM/RMP organizational chart appeared to assign departments to specific sections of the RMP and not individuals by name or title to specific sections of the risk management program.

2. 40 CFR 68.30(c): Formosa did not use to most recent Census data to estimate the population potentially affected in the offsite consequence analyses.

3. 40 CFR 68.30(d): The population identified in the worst case scenario was not estimated to two significant figures.

4. 40 CFR 68.39(e): Formosa did not maintain documentation used to estimate population and environmental receptors for the offsite consequence analyses.

5. 40 CFR 68.65(c)(1)(iii): Formosa did not provide the maximum intended inventory.

6. 40 CFR 68.67(c)(1): Formosa did not identify hurricane as a hazard in the 2012 PHAs.

7. 40 CFR 68.67(c)(2): In the 2012 PHAs, Formosa did not address incidents that occurred at the stationary source that had a likely potential for catastrophic consequences.

8. 40 CFR 68.67(e): The facility siting tracking sheet did not set a target date for outstanding action items.

9. 40 CFR 68.67(e): Formosa maintains documentation that tracks the recommendations from each PHA; however, closed recommendations did not identify the action taken that led to closure.

10. 40 CFR 68.67(e): The PHA tracking sheets identified action items that were past the due date with no indication of an extension or updated target date.

11. 40 CFR 68.69(a)(2): Formosa did not list or reference operating limits: consequences of deviation or steps required to correct or avoid deviation within each operating procedure.

12. 40 CFR 68.69(a)(3): Formosa did not list or reference safety and health considerations within each operating procedure.

13. 40 CFR 68.69(d) and 68.85(b): Hot work permits required the fire watch to be identified by name. Formosa did not consistently identify the fire watch on the reviewed permits.

14. 40 CFR 68.77(b): 200 Area Furnace and 300 Area Expansion PSSR checklists were not filled out to completion and action items were not documented as closed prior to start-up.

15. 40 CFR 68.79(d): Formosa did not correct the deficiencies discovered in the 2011 compliance audit.

16. 40 CFR 68.95(a)(1)(ii): The ERP which incorporates the Crisis Management Plan references medical treatment but does not identify what first aid is necessary for accidental human exposure.

17. 40 CFR 68.95(a)(4): Formosa did not provide a procedure to review and update the ERP and ensure that employees are informed of the changes.

Section IV – FOLLOW UP

Formosa requested an extension until August 22, 2014, to provide documents requested as part of the inspection for offsite review. The information that Formosa will provide will be evaluated during the enforcement process.

Section V – LIST OF APPENDICES

Appendix 1 – Sign-in sheet

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202 - 2733

APR 14 2015

VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED: 7014 0150 0000 2453 8899

Formosa Plastics Corporation, Louisiana
P.O. Box 271
Baton Rouge, LA 70821-0271
Attn: Plant Manager

Robert T. Stewart
Kelly Hart & Hallman, LP
301 Congress Avenue, Suite 2000
Austin, TX 78701

Re: United States v. Formosa Plastics Corporation, Texas, et al.
Civil Action No. 6:09-cv-00061
DEMAND FOR STIPULATED PENALTIES

Dear Sir:

Pursuant to Paragraph 30 of the Consent Decree entered in the above-referenced matter ("Consent Decree"), the United States Environmental Protection Agency (EPA) hereby demands payment from Formosa Plastics Corporation, Louisiana of stipulated penalties for violations of certain requirements of the Consent Decree. These violations involve Formosa Plastics Corporation, Louisiana, located in Baton Rouge, Louisiana ("Formosa"). See Consent Decree at ¶ 30.

The Consent Decree requires Formosa to undertake enhancements to the Leak Detection and Repair ("LDAR") program. See id., Appendix A. Under Paragraph 32 of the Consent Decree, Formosa is liable for stipulated penalties of $175 for each component that Formosa failed to timely include in its LDAR program. Formosa has failed to timely include 242 components. Under the terms of the Consent Decree, as described below, the total amount of stipulated penalties due is $42,350. The EPA therefore makes a demand for $42,350.

* * * *

Stipulated Penalties as Calculated under the Terms of the Decree:
Paragraph 32 Penalties

Failure to add existing Covered Equipment to the LDAR Program. Appendix A, Subsection J of this Consent Decree required Formosa to complete an initial LDAR audit of the Louisiana facility by no later than April 29, 2010. Formosa retained ERM Consulting to conduct the audit and it was completed in a timely manner. The third party audit report did not identify any untagged components or regulated components that did not appear to be included in the facility's LDAR program. Mr. Kelly Serio certified in the September 29, 2010 submittal that "all equipment at the Facility that is regulated under a federal, state, or local leak detection and repair program has been identified and included in the Facility's LDAR program."

After the initial audit, however, in correspondence dated February 12, 2015, Formosa reported that it discovered that 242 components had not been added to the LDAR program within one year of the Date of Lodging as follows:

No. of Components	Source of Information
242	Formosa's letter dated February 12, 2015

TOTAL: 242 components

Paragraph 32 of the Consent Decree states that "For failure to add existing Covered Equipment to the LDAR Program pursuant to Appendix A . . . if Defendant determines (either on its own or through a third-party audit) that it has, by no later than one year after the Date of Lodging, failed to include any Existing Covered Equipment in its LDAR program, Defendant shall pay $175 per piece of Covered Equipment that it failed to include." Formosa did not timely include 242 components in its LDAR program, and is liable for stipulated penalties of $42,350 (242 x $175).

* * * *

Under Paragraph 39, payment of $42,350 must be made in accordance with the provisions of Paragraph 9 of the Consent Decree, which in turn requires the US Attorney's Office for the Southern District of Texas to issue EFT instructions to Formosa for payment of $42,350.

Under Paragraph 35 of the Consent Decree, Formosa must pay these stipulated penalties within 30 days of receiving this written demand unless it invokes the dispute resolution provisions of the Decree. Therefore, prior to having the US Attorney's Office issue EFT instructions to Formosa, and consistent with the terms of the Consent Decree, if Formosa plans to contest any or all of the demand made in this letter, Formosa must invoke the resolution

provisions of Section IX of the Decree as soon as possible but no later than 30 days after its receipt of this letter. Paragraph 37 of the Consent Decree provides the terms under which stipulated penalties accrue and when they must be paid during dispute resolution.

The EPA is not aware of any basis upon which Formosa may successfully defend the demand made in this letter. EPA therefore also requests Formosa to notify the EPA as soon as possible but no later than 30 days after its receipt of this letter if it does not intend to invoke dispute resolution. Upon receipt of that notice, EPA will have the US Attorney's Office prepare the EFT instructions and will arrange to provide these instructions to Formosa.

Thank you for your prompt attention to this matter.

Sincerely,

John Blevins
Director
Compliance Assurance and
Enforcement Division

cc:
Scott M. Cernich
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
P.O. Box 7611
Ben Franklin Station
Washington, DC 20044-7611

Andrew R. Stewart
Acting Director, Special Litigation and Projects Division
Office of Civil Enforcement
Office of Enforcement and Compliance Assistance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (MC 2248-A)
Washington, DC 20460

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 Ross Avenue
Dallas, Texas 75202-2733

August 4, 2015

CONFIDENTIAL SETTLEMENT COMMUNICATION

Via e-mail – owolff@flbr.fpcusa.com

Mr. Omer Wolff
EHS Manager
Baton Rouge Plant
Formosa Plastics Corp., USA
P.O. Box 271
Baton Rouge, LA 70821

Dear Mr. Wolff:

As you know, EPA conducted a Clean Air Act inspection at your facility from July 22 – 24, 2014. In a letter dated April 21, 2015, EPA requested additional information regarding the inspection from you. In that letter, EPA stated that after we had a chance to review the information you submitted, we would like to set up a meeting with Formosa to discuss issues relating to the inspection. We have completed our review, and therefore are offering Formosa the opportunity to discuss the potential violations that EPA has identified. The potential violations EPA has identified along with a reference to the finding in the inspection report or to another document are set forth below:

1. Failure to Document Individuals by Name or Position in Organizational Chart 40 C.F.R. § 68.15(c). Inspection Report, p. 2 and Area of Concern No. 1.

2. Failure to Maintain Data Used to Estimate Population and Environmental Receptors for the Offsite Consequence Analyses – 40 C.F.R. § 68.39(e). Inspection Report, p. 3 and Area of Concern Nos. 2 and 4.

3. Failure to Compile a Maximum Intended Inventory of Regulated Substances – 40 C.F.R. § 68.65(c)(1)(iii). Area of Concern No. 5.

4. Failure to Identify Hurricanes as a Hazard of the Process – 40 C.F.R. § 68.67. Inspection Report, p. 4 and Area of Concern No. 6.

5. Failure to Ensure that PHA Findings and Recommendations are Resolved in a Timely Manner – 40 C.F.R. § 68.67. Inspection Report, p. 4 and Area of Concern Nos. 8, 9, and 10.

6. Failure to Update Process Hazard Analysis (PHA) Every Five Years – 40 C.F.R. § 68.67(f). Inspection Report, p. 4. The 2012 PHAs for the VCM and PVC processes were updated after the 5 year deadline.

7. Failure to Conduct an Adequate PHA for the VCM Process – 40 C.F.R. § 68.67. Incident Investigation Report No. 2011-123, FPC1262 – FPC1267.

8. Failure to Properly Implement Certain Operating Procedures – 40 C.F.R. § 68.69. Incident Investigation Report No. 2013-127, FPC1259 – FPC1261.

9. Failure to Conduct a Management of Change – 40 C.F.R. § 68.75. Incident Investigation Report No. 2011-123, FPC1262 – FPC1267.

10. Failure to Correct Timely Deficiencies in 2008 and 2011 Compliance Audits 40 C.F.R. § 68.79(d). Inspection Report, pp. 5 and 6 and Area of Concern No. 15.

11. Failure to Include the Date Incident Investigation Began – 40 C.F.R. § 68.81(d)(2). Incident Investigation Report No. 2013-127, FPC1259 – FPC1261 and Incident Investigation Report No. 2011-123, FPC1262 – FPC1267.

12. Failure to Periodically Evaluate the Performance of Contractors in Fulfilling the Obligations Identified in 40 C.F.R. § 68.87(c) – 40 C.F.R. § 68.87(b)(5). Inspection Report, p. 6.

We would like to set up a meeting sometime in August 2015 to discuss these potential violations and to discuss the steps that Formosa is or has taken to address these potential violations. If you have any questions, please feel free to call or have your attorney call me at (214) 665-8074 or e-mail me at pearson.evan@epa.gov.

Sincerely,

Evan L. Pearson
Senior Enforcement Counsel

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
FORMOSA PLASTICS CORPORATION, LOUISIANA BATON ROUGE, LOUISIANA	)	DOCKET NO. CAA-06-2016-3361
RESPONDENT	)	

CONSENT AGREEMENT AND FINAL ORDER

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency (EPA), Region 6 (Complainant) and Formosa Plastics Corporation, Louisiana (Respondent) in the above-referenced proceeding, hereby agree to resolve this matter through the issuance of this Consent Agreement and Final Order (CAFO).

I. PRELIMINARY STATEMENT

1. This proceeding for the assessment of civil penalties is brought by EPA pursuant to Section 113(d) of the Clean Air Act (CAA), 42 U.S.C. § 7413(d), and is simultaneously commenced and concluded through the issuance of this CAFO pursuant to 40 C.F.R. §§ 22.13(b), 22.18(b)(2) and (3), and 22.34.

2. For the purposes of this proceeding, the Respondent admits the jurisdictional allegations contained herein; however, the Respondent neither admits nor denies the specific factual allegations or conclusions of law contained in this CAFO.

3. The Respondent explicitly waives any right to contest the allegations and its right to appeal the proposed Final Order set forth therein, and waives all defenses which have been raised or could have been raised to the claims set forth in the CAFO.

4. Compliance with all the terms and conditions of this CAFO shall only resolve the Respondent's liability for Federal civil penalties for those violations which are set forth herein.

5. The Respondent consents to the issuance of the CAFO, to the assessment and payment of the civil penalty in the amount and by the method set forth in this CAFO, and the conditions specified in the CAFO.

6. Each undersigned representative of the parties to this agreement certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this agreement, to execute it, and to legally bind that party to it.

7. This CAFO shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, authorized representatives, successors and assigns.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

8. Formosa Plastics Corporation, Louisiana (Respondent) is a Delaware corporation authorized to do business in the State of Louisiana.

9. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency of the United States and any officer, agent, or employee thereof."

10. The Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

11. The Respondent operates a manufacturing facility located at the end of Gulf States Road, Baton Rouge, Louisiana 70805. The primary commodity produced at the facility is polyvinyl chloride resin.

12. "Stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3 as meaning:

> any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

13. The Respondent's facility identified in Paragraph 11 is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

14. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 11.

15. Each of the following substances is a "regulated substance", as defined in 40 C.F.R. § 68.3 and set forth in 40 C.F.R. § 68.130:

A. Chloroform [Methane, trichloro-]
B. Vinyl Chloride [Ethene, chloro-]
C. Hydrogen chloride (anhydrous) [Hydrochloric acid];
D. Propylene [1-Propene]; and
E. Chlorine.

16. "Process" is defined in 40 C.F.R. § 68.3 as meaning

> any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of activities. For the purpose of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

17. The Respondent has the following processes at the stationary source identified in Paragraph 11:

A. VCM (vinyl chloride monomer) process; and
B. PVC (polyvinyl chloride) process.

18. 40 C.F.R. § 68.130 specifies the following threshold quantities for the regulated substances listed below:

A. Chloroform [Methane, trichloro-] – 20,000 pounds;
B. Vinyl Chloride [Ethene, chloro-] – 10,000 pounds
C. Hydrogen chloride (anhydrous) [Hydrochloric acid] – 5,000 pounds;
D. Propylene [1-Propene] – 10,000 pounds; and
E. Chlorine – 2,500 pounds.

19. The Respondent has exceeded the threshold quantity for chloroform [methane, trichloro-], vinyl chloride [ethene, chloro-], hydrogen chloride (anhydrous) [hydrochloric acid], propylene [1-propene], and chlorine at the VCM process identified in Paragraph 17.A.

20. The Respondent has exceeded the threshold quantity for vinyl chloride [ethene, chloro-] at the PVC process identified in Paragraph 17.B.

21. "Covered process" is defined in 40 C.F.R. § 68.3 as meaning "a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115."

22. The processes identified in Paragraph 17 are each a "covered process" as that term is defined by 40 C.F.R. § 68.3.

23. The covered processes identified in Paragraphs 17 and 22 are each subject to the "Program 3" requirements of the RMP regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

24. On or about July 22 – 24, 2014, EPA inspectors conducted an inspection of the Respondent's facility.

25. Section 113(d)(1) of the CAA, 42 U.S.C. § 7413(d)(1), authorizes EPA to bring an administrative action for penalties that exceed $320,000[1] and/or the first alleged date of violation occurred more than twelve (12) months prior to the initiation of the action, if the Administrator and the United States Attorney General jointly determine that the matter is appropriate for administrative action.

26. EPA and the U.S. Department of Justice have jointly determined that the Complainant can administratively assess a civil penalty even though the penalty might exceed the statutory amount and the alleged violations have occurred more than twelve (12) months prior to the initiation of the administrative action.

B. VIOLATIONS

Count One – Failure to Maintain Data Used to Estimate Population and Environmental Receptors for the Offsite Consequence Analyses

27. 40 C.F.R. § 68.39(e) provides that the owner or operator shall maintain the data used to estimate population and environmental receptors potentially affected for the offsite consequence analysis.

28. On or about July 28, 2014, EPA requested the RMP comp modeling documentation, population documentation, maps for each scenario, and rationale for selection for the offsite consequence analysis from the Respondent.

29. On or about August 22, 2014, EPA received the Respondent's response to the requested information.

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[1] The maximum penalty that can be assessed (without a waiver) under Section 113 of the Clean Air Act was increased by the Civil Monetary Penalty Inflation Adjustment Rule codified at 40 C.F.R. Part 19 to $220,000 for violations occurring between January 30, 1997 and March 15, 2004, to $270,000 for violations occurring between March 15, 2004 and January 12, 2009, to $295,000 for violations occurring between January 12, 2009 and December 6, 2013, and to $320,000 for violations occurring after December 6, 2013.

30. As of August 22, 2014, the Respondent failed to maintain the data used to estimate population for the offsite consequence analysis.

31. As of August 22, 2014, the Respondent failed to maintain data used to identify public receptors for its offsite consequence analysis.

32. As of August 22, 2014, the Respondent failed to maintain data used to identify the environmental receptors for its offsite consequence analysis.

33. Therefore, the Respondent violated 40 C.F.R. § 68.39(e) by failing to maintain the data used to estimate population and environmental receptors potentially affected for the offsite consequence analysis.

Count Two – Failure to Ensure that PHA Findings and Recommendations are Resolved in a Timely Manner

34. 40 C.F.R. §§ 68.67 provides in part, that the owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by 40 C.F.R. Part 68. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards in the process. The process hazard analysis shall address, among other things, stationary source siting. The owner or operator shall establish a system to promptly address the team's findings and recommendation, assure that the recommendations were resolved in a timely manner and that the resolution is documented. The owner or operator shall also develop a written schedule of when the actions are required to be completed. At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements of 40 C.F.R. § 68.67(d) to assure that the process hazard analysis is consistent with the current process.

35. The Respondent completed a facility siting study in June 2008.

36. The facility siting study was conducted to meet the requirements of 40 C.F.R. § 68.67(c)(5).

37. The Respondent failed to develop a written schedule for the findings and recommendations from the facility siting study.

38. The Respondent failed to resolve certain facility siting study recommendations in a timely manner.

39. The process hazard analysis (PHA) revalidation for the VCM process was completed on or about February 3, 2012.

40. The PHA revalidation for the PVC process was completed or about February 16, 2012.

41. The Respondent failed to resolve all of the recommendations from the PHA revalidation for the VCM process in a timely manner.

42. The Respondent failed to resolve all of the recommendations from the PHA revalidation for the PVC process in a timely manner.

43. Therefore, the Respondent violated 40 C.F.R. § 68.67(e) by failing to develop a written schedule to resolve certain facility siting study recommendations and by failing resolve certain facility siting recommendations and PHA recommendations in a timely manner.

Count Three – Failure to Update Process Hazard Analysis Every Five Years

44. 40 C.F.R. § 68.67(f) provide that at least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements in 40 C.F.R. § 68.67(d), to assure that the process hazard analysis is consistent with the current process.

45. The Respondent updated and revalidated the process hazard analysis for the VCM process on or about June 2006.

46. The Respondent was required to update and revalidate the process hazard analysis for the VCM process by June 2011.

47. The Respondent failed to update and revalidate the process hazard analysis for the VCM process until February 3, 2012.

48. The Respondent updated and revalidated the process hazard analysis for the PVC process on or about May 17, 2006.

49. The Respondent was required to update and revalidate the process hazard analysis for the PVC process by May 17, 2011.

50. The Respondent failed to update and revalidate the process hazard analysis for the PVC process until February 16, 2012.

51. Therefore, the Respondent violated 40 C.F.R. § 68.67(f) by failing to timely update and revalidate the process hazard analyses for the VCM process and the PVC process.

Count Four – Failure to Conduct an Adequate PHA for the VCM Process

52. 40 C.F.R. §§ 68.67 provides in part, that the owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by 40 C.F.R. Part 68. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards in the process. The process hazard analysis shall address, among other things, the hazards of the process and engineering and administrative controls applicable to the hazards, and the consequences of failure of engineering and administrative hazards. At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting

the requirements of 40 C.F.R. § 68.67(d) to assure that the process hazard analysis is consistent with the current process.

53. The VCM process is a "covered process" as that term is defined by 40 C.F.R. § 68.3.

54. The Respondent updated and revalidated the process hazard analysis for the VCM process on or about June 2006.

55. The Respondent was required to update and revalidate the process hazard analysis for the VCM process by June 2011.

56. The Respondent failed to update and revalidate the process hazard analysis for the VCM process until February 3, 2012.

57. On or about October 14, 2011, the NE-111 nitrogen heater for the molecular sieves ruptured. The heater is used to heat nitrogen gas to regenerate the sieve beds.

58. The NE-111 nitrogen heater is part of the VCM process.

59. A hazard associated with the VCM process is overpressuring the NE-111 nitrogen heater.

60. The PHA for the VCM process failed to recognize the potential for overpressuring the heater without a connected control device.

61. Therefore, the Respondent violated 40 C.F.R. § 68.67 by failing to conduct an adequate PHA for the VCM process.

Count Five – Failure to Properly Implement Certain Operating Procedures

62. 40 C.F.R. § 68.69(a) provides that the owner or operator shall develop and implement written operating procedures that provide clear instructions for safely conducting

activities involved in each covered process consistent with process safety information and shall address at least the following elements:

A. Steps for each operating phase:

1. Initial startup;
2. Normal operations;
3. Temporary operations;
4. Emergency shutdown including the conditions under which emergency shutdown is required, and the assignment of shutdown responsibility to qualified operators to ensure that emergency shutdown is executed in a timely manner;
5. Emergency operations;
6. Normal shutdown; and
7. Startup following a turnaround, or after an emergency shutdown.

B. Operating limits:

1. Consequences of Deviation; and
2. Steps required to correct or avoid deviation.

* * * *

C. Safety systems and their function.

63. The following equipment is part of the VCM process:

A. C Oxy reactor;
B. D Oxy reactor;
C. NR301C Oxychlorination reactors
D. NR301D Oxychlorination reactor;
E. NR201A furnace;
F. NR201B furnace; and
G. NR201C furnace.

64. The VCM process is a "covered process" as that term is defined in 40 C.F.R. § 68.3.

65. On or about August 18, 2013, the Respondent bypassed the low flow interlocks for the HCl, O_2, and ethylene feed to the D Oxy reactor to prevent the reactor from tripping due to spikes in flow.

66. On or about August 18, 2013, the Respondent bypassed the interlocks without following the override procedure.

67. On or about August 23, 2013, the low flow interlocks for HCl and ethylene feed to C Oxy reactor, and the high flow interlock for O_2 feed to C Oxy reactor were preemptively bypassed when an HCl leak was discovered that had the potential to shut down the plant.

68. On or about August 23, 2013, the Respondent bypassed the interlocks without following the override procedure.

69. Therefore, the Respondent violated 40 C.F.R. § 68.69 by failing to properly implement certain operating procedures.

Count Six – Failure to Conduct a Management of Change

70. 40 C.F.R. § 68.75(a) & (b) provides that owner or operator shall establish and implement written procedures to manage changes (except for "replacement in kind") to process chemicals, technology, equipment, and procedures; and, changes to stationary sources that affect a covered process. The procedures shall ensure that the following considerations are addressed prior to any change: (1) the technical basis for the change; (2) impact of change on safety and health; (3) modification to operating procedures; (4) necessary time period for the change; and (5) authorization requirements for the proposed change.

71. The NE-111 nitrogen heater for the molecular sieves is part of the VCM process.

72. The VCM process is a "covered process" as that term is defined by 40 C.F.R. § 68.3.

73. On or about October 2011, the Respondent replaced the dual action solenoid with a single action solenoid.

74. The single action solenoid does not have a manual reset.

75. The replacement of a dual action solenoid for a single action solenoid is not a "replacement in kind".

76. The replacement of a dual action solenoid for a single action solenoid was a change in process equipment.

77. The Respondent failed to conduct a management of change (MOC) prior to replacing a dual action solenoid with a single action solenoid.

78. Therefore, the Respondent violated 40 C.F.R. § 68.75 by failing to conduct a management of change prior to replacing a dual action solenoid with a single action solenoid.

Count Seven – Failure to Timely Correct Deficiencies in 2008 and 2011 Compliance Audits

79. 40 C.F.R. § 68.79 provides the following:

> (a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.
>
> * * * *
>
> (c) A report of the findings of the audit shall be developed.
>
> (d) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

80. On or about November 3 – 7, 2008, the Respondent conducted a compliance audit at the facility identified in Paragraph 11.

81. As of July 2014, the Respondent failed to timely determine and document an appropriate response to certain findings for the compliance audit identified in Paragraph 80.

82. On or about October 11 - 14, 2011, the Respondent conducted a compliance audit at the facility identified in Paragraph 11.

83. As of July 2014, the Respondent failed to timely determine and document an appropriate response to certain findings for the compliance audit identified in Paragraph 82.

84. Therefore, the Respondent violated 40 C.F.R. § 68.79(d) by failing to timely determine and document appropriate responses to certain findings of two compliance audits.

III. TERMS OF SETTLEMENT

A. CIVIL PENALTY

85. For the reasons set forth above, the Respondent, without admitting nor denying the Findings of Fact or Conclusions of Law herein, has agreed to pay a civil penalty of **Two Hundred Seventy-Seven Thousand, Two Hundred Dollars ($277,200).**

86. Within thirty (30) days of the effective date of this CAFO, the Respondent shall pay the assessed civil penalty by certified check, cashier's check, or wire transfer, made payable to "Treasurer, United States of America, EPA - Region 6". Payment shall be remitted in one of three (3) ways: regular U.S. Postal mail (including certified mail), overnight mail, or wire transfer. For regular U.S. Postal mail, U.S. Postal Service certified mail, or U.S. Postal Service express mail, the check should be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

For overnight mail (non-U.S. Postal Service, e.g. Fed Ex), the check should be remitted to:

U.S. Bank
Government Lockbox 979077
US EPA Fines & Penalties
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, MO 63101
Phone No. (314) 418-1028

For wire transfer, the payment should be remitted to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read
"D 68010727 Environmental Protection Agency" with a phone number of (412) 234-4381".

PLEASE NOTE: Docket Number CAA-06-2016-3361 shall be clearly typed on the check or other method of payment to ensure proper credit. If payment is made by check, the check shall also be accompanied by a transmittal letter and shall reference the Respondent's name and address, the case name, and docket number of the CAFO. If payment is made by wire transfer, the wire transfer instructions shall reference the Respondent's name and address, the case name, and docket number of the CAFO. The Respondent shall also send a simultaneous notice of such payment, including a copy of the check and transmittal letter, or wire transfer instructions to the following:

Sherronda Phelps
Environmental Engineer
Surveillance Section – Houston Lab (6EN-ASH)
U.S. EPA, Region 6 Laboratory
10625 Fallstone Rd
Houston, TX 77099

Lorena Vaughn
Regional Hearing Clerk (6RC-D)
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733

The Respondent's adherence to this request will ensure proper credit is given when penalties are received in the Region.

87. The Respondent agrees not to claim or attempt to claim a federal income tax deduction or credit covering all or any part of the civil penalty paid to the United States Treasurer.

88. If the Respondent fails to submit payment within thirty (30) days of the effective date of this CAFO, the Respondent may be subject to a civil action to collect any unpaid portion of the assessed penalty, together with interest, handling charges, and nonpayment penalties as set forth below.

89. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, unless otherwise prohibited by law, EPA will assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim. Interest on the civil penalty assessed in this CAFO will begin to accrue thirty (30) days after the effective date of the CAFO and will be recovered by EPA on any amount of the civil penalty that is not paid by the respective due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). Moreover, the costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. *See* 40 C.F.R. § 13.11(b).

90. EPA will also assess a $15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional $15.00 for each subsequent thirty (30) day period that the penalty remains unpaid. In addition, a penalty charge of up to six percent per year will be assessed monthly on any portion of the debt which remains delinquent more than ninety (90) days. *See* 40 C.F.R. § 13.11(c). Should a penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. *See* 31 C.F.R. § 901.9(d). Other penalties for failure to make a payment may also apply.

91. Pursuant to Section 113(d)(5) of the CAA, 42 U.S.C. § 7413(d)(5), any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to, attorneys' fees and costs incurred by the United States for collection proceedings, and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of each quarter.

92. This CAFO is considered a "prior violation" for the purpose of demonstrating a "history of noncompliance" under the Clean Air Act Stationary Source Penalty Policy, and the Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (June 2012).

B. RETENTION OF ENFORCEMENT RIGHTS

93. EPA does not waive any rights or remedies available to EPA for any other violations by the Respondents of Federal or State laws, regulations, or permitting conditions.

94. Nothing in this CAFO shall relieve the Respondent of the duty to comply with Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68.

95. Nothing in this CAFO shall limit the power and authority of EPA or the United States to take, direct, or order all actions to protect public health, welfare, or the environment, or prevent, abate or minimize an actual or threatened release of hazardous substances, pollutants, contaminants, hazardous substances on, at or from the Respondent's facility whether related to the violations addressed in this CAFO or otherwise Furthermore, nothing in this CAFO shall be construed or to prevent or limit EPA's civil and criminal authorities, or that of other Federal,

State, or local agencies or departments to obtain penalties or injunctive relief under other Federal, State, or local laws or regulations.

96. The Complainant reserves all legal and equitable remedies available to enforce the provisions of this CAFO. In any such action to enforce the provisions of this CAFO, the Respondent shall not assert, and may not maintain, any defense of laches, statute of limitations, or any other equitable defense based on the passage of time. This CAFO shall not be construed to limit the rights of the EPA or United States to obtain penalties or injunctive relief under the Clean Air Act or its implementing regulations, or under other federal or state laws, regulations, or permit conditions.

97. In any subsequent administrative or judicial proceeding initiated by the Complainant or the United States for injunctive relief, civil penalties, to enforce the provisions of this CAFO, or other appropriate relief relating to this Facility, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the Complainant or the United States in the subsequent proceeding were or should have been brought in the instant case, except with respect to claims for civil penalties that have been specifically resolved pursuant to this CAFO.

98. The Respondent waives any right it may possess at law or in equity to challenge the authority of the EPA or the United States to bring a civil action in a United States District Court to compel compliance with this CAFO and to seek an additional penalty for such noncompliance, and agrees that federal law shall govern in any such civil action. The Respondent also consents to personal jurisdiction in any action to enforce this CAFO in the appropriate Federal District Court.

99. The Respondent also waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of law or fact set forth in this CAFO, including any right of judicial review under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1).

100. This CAFO is not a permit, or a modification of any permit, under any federal, State, or local laws or regulations. The Respondent is responsible for achieving and maintaining complete compliance with all applicable federal, State, and local laws, regulations, and permits. The Respondent's compliance with this CAFO shall be no defense to any action commenced pursuant to any such laws, regulations, or permits, except as set forth herein. The Complainant does not warrant or aver in any manner that the Respondent's compliance with any aspect of this CAFO will result in compliance with provisions of the Clean Air Act or with any other provisions of federal, State, or local laws, regulations, or permits.

C. COSTS

101. Except as provided in Paragraph 91, each party shall bear its own costs and attorney's fees. Furthermore, the Respondent specifically waives its right to seek reimbursement of its costs and attorney's fees under 5 U.S.C. § 504 and 40 C.F.R. Part 17.

D. EFFECTIVE DATE

102. This CAFO becomes effective upon filing with the Regional Hearing Clerk.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS CONSENT AGREEMENT AND FINAL ORDER:

FOR THE RESPONDENT:

Date: 1/16/2017

Paul Heurtevant
Plant Manager, Assistant Vice-President
Formosa Plastics Corporation, Louisiana

FOR THE COMPLAINANT:

Date: 2-1-17

Stacey B. Dwyer, P.E.
Acting Director
Compliance Assurance and Enforcement Division
EPA – Region 6

FINAL ORDER

Pursuant to the Section 113 of the CAA, 42 U.S.C. § 7413, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, 40 C.F.R. Part 22, the foregoing Consent Agreement is hereby ratified. This Final Order shall not in any case affect the right or EPA or the United States to pursue appropriate injunctive relief or other equitable relief for criminal sanctions for any violations of law. This Final Order shall resolve only those causes of action alleged herein. Nothing in this Final Order shall be construed to waive, extinguish or otherwise affect the Respondent's (or its officers, agents, servants, employees, successors, or assigns) obligation to comply with all applicable federal, state, and local statutes and regulations, including the regulations that were the subject of this action. The Respondent is ordered to comply with the terms of settlement as set forth in the Consent Agreement. Pursuant to 40 C.F.R. § 22.31(b), this Final Order shall become effective upon filing with the Regional Hearing Clerk.

Date: 2/7/17

Thomas Rucki
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of February, 2017, the original and one copy of the foregoing Consent Agreement and Final Order (CAFO) was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the CAFO was sent to the following by certified mail, return receipt requested 7006 0810 0005 9535 9240:

Mr. John King
Breazeale, Sachse & Wilson, L.L.P.
P.O. Box 3197
One American Place, 23rd Floor
Baton Rouge, LA 70821-3197

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 6
DALLAS, TEXAS

IN THE MATTER OF:	)	
	)	
FORMOSA PLASTICS CORPORATION, LOUISIANA	)	DOCKET NO. CAA-06-2016-3362
BATON ROUGE, LOUISIANA	)	
	)	
RESPONDENT	)	
	)	

ADMINISTRATIVE ORDER ON CONSENT

The Director of the Compliance Assurance and Enforcement Division of the United States Environmental Protection Agency, Region 6 (EPA) and Formosa Plastics Corporation, Louisiana (Respondent) in the above-referenced proceeding, hereby enter into this Administrative Order on Consent (Order).

I. INTRODUCTION AND JURISDICTION

1. This Order is issued by EPA pursuant to Section 113(a)(3) and (4) of the Clean Air Act (CAA), 42 U.S.C. § 7413(a)(3) and (4), which authorizes EPA issue compliance orders for violations of the CAA, including violations of Section 112(r) of the CAA, 42 U.S.C. § 7412(r), and the regulations promulgated at 40 C.F.R. Part 68. The Director, Compliance Assurance and Enforcement Division, EPA Region 6, is the person to whom the authority has been delegated to issue compliance orders in the States of Arkansas, Louisiana, Oklahoma, New Mexico, and Texas.

2. This Order is issued for the Respondent's failure to comply with the Chemical Accident Prevention Provisions of 40 C.F.R. Part 68 regarding the Respondent's facility located at the end of Gulf States Road, Baton Rouge, Louisiana 70805.

3. This Order is entered into upon mutual agreement of the parties. Accordingly, the Respondent agrees to undertake all actions required by it by the terms and conditions of this Order. The Respondent consents to and agrees not to contest the authority or jurisdiction of EPA to issue or enforce this Order, and also agrees not to contest the validity or terms of this Order in any action to enforce its provisions.

4. This Order shall apply to and be binding upon the Respondent, its officers, directors, servants, employees, agents, successors and assigns. No change in ownership or corporate or partnership status of the Respondent will in any way alter the status of the Respondent or its responsibilities under this Order.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. PRELIMINARY ALLEGATIONS

5. Formosa Plastics Corporation, Louisiana (Respondent) is a Delaware corporation authorized to do business in the State of Louisiana.

6. "Person" is defined in Section 302(e) of the CAA, 42 U.S.C. § 7602(e), as "an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency of the United States and any officer, agent, or employee thereof."

7. The Respondent is a "person" as defined by Section 302(e) of the CAA, 42 U.S.C. § 7602(e), and within the meaning of Section 113(d) of the CAA, 42 U.S.C. § 7413(d).

8. The Respondent operates a manufacturing facility located at the end of Gulf States Road, Baton Rouge, Louisiana 70805. The primary commodity produced at the facility is polyvinyl chloride resin.

9. "Stationary source" is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3 as meaning:

> any buildings, structures, equipment, installations or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control), and from which an accidental release may occur.

10. The Respondent's facility identified in Paragraph 8 is a "stationary source" as that term is defined by Section 112(r)(2)(C) of the CAA, 42 U.S.C. § 7412(r)(2)(C), and 40 C.F.R. § 68.3.

11. The Respondent is the owner and/or operator of the stationary source identified in Paragraph 8.

12. Each of the following substances is a "regulated substance", as defined in 40 C.F.R. § 68.3 and set forth in 40 C.F.R. § 68.130:

A. Chloroform [Methane, trichloro-]
B. Vinyl Chloride [Ethene, chloro-]
C. Hydrogen chloride (anhydrous) [Hydrochloric acid];
D. Propylene [1-Propene]; and
E. Chlorine.

13. "Process" is defined in 40 C.F.R. § 68.3 as meaning

> any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of activities. For the purpose of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

14. The Respondent has the following processes at the stationary source identified in Paragraph 8:

A. VCM (vinyl chloride monomer) process; and
B. PVC (polyvinyl chloride) process.

15. 40 C.F.R. § 68.130 specifies the following threshold quantities for the regulated substances listed below:

A. Chloroform [Methane, trichloro-] – 20,000 pounds;
B. Vinyl Chloride [Ethene, chloro-] – 10,000 pounds

C. Hydrogen chloride (anhydrous) [Hydrochloric acid] – 5,000 pounds;
D. Propylene [1-Propene] – 10,000 pounds; and
E. Chlorine – 2,500 pounds.

16. The Respondent has exceeded the threshold quantity for chloroform [methane, trichloro-], vinyl chloride [ethene, chloro-], hydrogen chloride (anhydrous) [hydrochloric acid], propylene [1-propene], and chlorine at the VCM process identified in Paragraph 14.A.

17. The Respondent has exceeded the threshold quantity for vinyl chloride [ethene, chloro-] at the PVC process identified in Paragraph 14.B.

18. "Covered process" is defined in 40 C.F.R. § 68.3 as meaning "a process that has a regulated substance present in more than a threshold quantity as determined under § 68.115."

19. The processes identified in Paragraph 14 are each a "covered process" as that term is defined by 40 C.F.R. § 68.3.

20. The covered processes identified in Paragraphs 14 and 19 are each subject to the "Program 3" requirements of the RMP regulations and must, among other things, comply with the Program 3 Prevention Program of 40 C.F.R. Part 68, Subpart D.

21. On or about July 22 – 24, 2014, EPA inspectors conducted an inspection of the Respondent's facility.

B. VIOLATIONS

1. Failure to Ensure that PHA Findings and Recommendations are Resolved in a Timely Manner

22. 40 C.F.R. §§ 68.67 provides in part, that the owner or operator shall perform an initial process hazard analysis (hazard evaluation) on processes covered by 40 C.F.R. Part 68. The process hazard analysis shall be appropriate to the complexity of the process and shall identify, evaluate, and control the hazards in the process. The process hazard analysis shall address, among other things, stationary source siting. The owner or operator shall establish a

system to promptly address the team's findings and recommendation, assure that the recommendations were resolved in a timely manner and that the resolution is documented. The owner or operator shall also develop a written schedule of when the actions are required to be completed. At least every five (5) years after the completion of the initial process hazard analysis, the process hazard analysis shall be updated and revalidated by a team meeting the requirements of 40 C.F.R. § 68.67(d) to assure that the process hazard analysis is consistent with the current process.

23. The Respondent completed a facility siting study in June 2008.

24. The facility siting study was conducted to meet the requirements of 40 C.F.R. § 68.67(c)(5).

25. The Respondent failed to develop a written schedule for the findings and recommendations from the facility siting study.

26. The Respondent failed to resolve certain facility siting study recommendations in a timely manner.

27. The process hazard analysis (PHA) revalidation for the VCM process was completed on or about February 3, 2012.

28. The PHA revalidation for the PVC process was completed or about February 16, 2012.

29. The Respondent failed to resolve all of the recommendations from the PHA revalidation for the VCM process in a timely manner.

30. The Respondent failed to resolve all of the recommendations from the PHA revalidation for the PVC process in a timely manner.

31. Therefore, the Respondent violated 40 C.F.R. § 68.67(e) by failing to develop a written schedule to resolve certain facility siting study recommendations and by failing resolve certain facility siting recommendations and PHA recommendations in a timely manner.

2. Failure to Timely Correct Deficiencies in 2008 and 2011 Compliance Audits

32. 40 C.F.R. § 68.79 provides the following:

> (a) The owner or operator shall certify that they have evaluated compliance with the provisions of this subpart at least every three years to verify that procedures and practices developed under this subpart are adequate and are being followed.
>
> * * * *
>
> (c) A report of the findings of the audit shall be developed.
>
> (d) The owner or operator shall promptly determine and document an appropriate response to each of the findings of the compliance audit, and document that deficiencies have been corrected.

33. On or about November 3 – 7, 2008, the Respondent conducted a compliance audit at the facility identified in Paragraph 8.

34. As of July 2014, the Respondent failed to timely determine and document an appropriate response to certain findings for the compliance audit identified in Paragraph 43.

35. On or about October 11 - 14, 2011, the Respondent conducted a compliance audit at the facility identified in Paragraph 8.

36. As of July 2014, the Respondent failed to timely determine and document an appropriate response to certain findings for the compliance audit identified in Paragraph 45.

37. Therefore, the Respondent violated 40 C.F.R. § 68.79(d) by failing to timely determine and document appropriate responses to certain findings of two compliance audits.

III. ORDER

38. Based on the foregoing Findings of Fact and Conclusions of Law, and other information available to EPA, it is hereby **Ordered and Agreed** that the Respondent shall comply with the requirements set forth below:

A. Upon the effective date of this Order, the Respondent shall begin conducting the following activities and complete all required activities by the date indicated in Paragraph 38.B below:

1. Resolve all remaining recommendations from the June 2008 Facility Siting Study (as set forth in the May, 2015 Update found at FPC 2953 – 2964) in accordance with 40 C.F.R. § 68.67(e).

2. Resolve all remaining recommendations from the February 2012 PHA revalidation for the VCM process (as set forth in the May, 2015 Update found at FPC 2966 – 2978) in accordance with 40 C.F.R. § 68.67(e).

3. Resolve all remaining recommendations from the February 2012 PHA revalidation (as in set forth in the May, 2015 Update found at FPC 2978 – 2989) for the PVC process in accordance with 40 C.F.R. § 68.67(e).

4. Correct all remaining deficiencies set forth in the November 2008 Compliance Audit (as set forth in FPC 3034 – 3051 and to the extent such deficiencies have not been included in or subsumed into the October 2011 Compliance Audit) and document an appropriate response for any remaining deficiencies in accordance with 40 C.F.R. § 68.79(d) for the remaining findings of the November 2008 Compliance Audit.

5. Correct all remaining deficiencies set forth in the October 2011 Compliance Audit (as in set forth the May, 2015 Update found at FPC 2926 – 2932) and document an appropriate

response for any remaining deficiencies in accordance with 40 C.F.R. § 68.79(d) for the remaining findings of the October 2011 Compliance Audit.

B. The Respondent shall complete all of the remaining requirements set forth in Paragraph 38.A within one year of the effective date of this Order.

C. The Respondent shall submit two status reports to EPA regarding the remaining items. The first status report is due six months from the effective date of the Order and second status report is due one year from the effective date of this Order. The Status Reports shall include the following information:

1. If a remaining item has been completed, documentation, such as a summary table, showing that the remaining item has been completed.

2. If a remaining item has not been completed,

a. A description of the actions that were taken during the prior six month period as to the remaining item;
b. A description of the actions that will be taken to complete the remaining item; and
c. Any issues that may prevent the Respondent from completing the remaining item.

3. Any other information that the Respondent believes is necessary.

D. Each status report must be accompanied by the following certification:

"I certify under penalty of law to the best of my knowledge and belief, that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

All submissions must be certified on behalf of the Respondent by the signature of a person authorized to sign a permit application or a report under 40 C.F.R. § 270.11.

39. Unless otherwise specifically provided elsewhere in this Order, whenever notice is required to be given, whenever a report or other document is required to be forwarded by one party to another, or whenever a submission or demonstration is required to be made, it shall be

directed to the individuals specified below at the addresses given (in addition to any action specified by statute or regulation), unless these individuals or their successors give notice in writing to the other party that another individual has been designated to receive the communication:

EPA:

Chief, Surveillance Section (6EN-AS)
Air Enforcement Branch
U.S. EPA, Region 6
1445 Ross Avenue, Suite 1200
Dallas, TX 75202-2733
Attention: Sherronda Phelps

Respondent:

Paul Heurtevant
Plant Manager, Assistant Vice-President
Formosa Plastics Corporation, LA
P.O. Box 271
Baton Rouge, Louisiana 70821

IV. GENERAL PROVISIONS

40. The Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in this Order.

41. This Order shall not relieve the Respondent of its obligation to comply with all applicable federal, State, and local laws, regulations and other legal requirements, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State or local permit.

42. EPA reserves all of its statutory and regulatory powers, authorities, rights, and remedies, both legal and equitable, which may pertain to the Respondent's failure to comply with any of the requirements of this Order. This Order shall not be construed as a covenant not to sue, release, waiver, or limitation of any rights, remedies, powers, and/or authorities, civil or criminal,

which EPA has under any other statutory, regulatory, or common law authority of the United States.

43. This Order does not resolve any civil or criminal claims of the United States for the violations alleged in this Order, nor does it limit the rights of the United States to obtain penalties or injunctive relief under the CAA or other applicable federal law or regulation.

44. This Order is not intended to be, nor shall it be construed to be, a permit. Further, the Parties acknowledge and agree that EPA's approval of this Order does not constitute a warranty or representation that requirements provided hereunder will meet the requirements of Section 112(r) of the CAA. Compliance by the Respondent with the terms of this Order shall not relieve the Respondent of its obligations to comply with the CAA or any other applicable local, State, or federal laws and regulations.

45. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of a regulated substance, extremely hazardous substance, or other substance on, at, or from the Facility. This Order shall not constitute or be construed as a release of any liability that the Respondent or any other person has under the CAA or any other law.

46. Nothing herein shall be construed as an extension of time for complying with any statutory or regulatory requirement under the CAA or any other law.

47. The Respondent waives any and all remedies, claims for relief and otherwise available rights to judicial or administrative review that the Respondent may have with respect to any issue of fact or law set forth in this Order, including any right of judicial review under Section 307(b)(1) of the CAA, 42 U.S.C. § 7607(b)(1).

48. In any subsequent administrative or judicial proceeding initiated by EPA or the United States for injunctive or other appropriate relief relating to the Facility, the Respondent shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppels, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by EPA or the United States in the subsequent proceeding were or should have been raised in the present matter.

49. Neither EPA nor the United States, by issuance of this Order, assumes any liability for any acts or omissions by Respondent or its employees, agents, contractors, or consultants engaged to carry out any action or activity pursuant to this Order. Nor shall EPA or the United States be held as a party to any contract entered into by Respondent or by its employees, agents, contractors, or consultants.

50. The Parties shall bear their own costs and fees in this action, including attorney fees.

51. Each undersigned representative of the parties to this Order certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this Order and to execute and legally bind that party to it.

52. This Order shall terminate one year from the effective date of this AOC.

53. Pursuant to Section 113(a)(4) of the CAA, 42 U.S.C. § 7413(a)(4), an Order does not take effect until the person to whom it has been issued has had an opportunity to confer with the EPA concerning the alleged violations. By signing this Order, the Respondent acknowledges and agrees that it has been provided an opportunity to confer with the EPA prior to issuance of this Order. Accordingly, the effective date of this Order shall be the date of signature by EPA.

THE UNDERSIGNED PARTIES CONSENT TO THE ENTRY OF THIS ADMINISTRATIVE ORDER ON CONSENT

FOR THE RESPONDENT:

Date: 1/16/2017

Paul Heurtevant
Plant Manager, Assistant Vice-President
Formosa Plastics Corporation, Louisiana

FOR EPA:

Date: 2-1-17

Stacey B. Dwyer, P.E.
Acting Director
Compliance Assurance and
Enforcement Division
EPA – Region 6

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of February, 2017, the original and one copy of the foregoing Administrative Order on Consent was hand delivered to the Regional Hearing Clerk, U.S. EPA - Region 6, 1445 Ross Avenue, Dallas, Texas 75202-2733, and that a true and correct copy of the Administrative Order on Consent was sent to the following certified mail, return receipt requested 7006 0810 0005 9535 9241:

Mr. John King
Breazeale, Sachse & Wilson, L.L.P.
P.O. Box 3197
One American Place, 23rd Floor
Baton Rouge, LA 70821-3197

Eva L Pe

U.S. Department of Justice
Environment and Natural Resource Division

P.O. Box 7611
Washington, DC 20044
202-514-0056
Scott.Cernich@usdoj.gov

October 25, 2018

VIA EMAIL AND CERTIFIED MAIL/RETURN RECEIPT REQUESTED
Formosa Plastics Corporation, Louisiana
P.O. Box 271
Baton Rouge, LA 70821
Attn: Plant Manager

Robert T. Stewart
Kelly Hart & Hallman, LP
303 Colorado Street, Suite 2000
Austin, TX 78701
bob.stewart@kellyhart.com

Re: United States v. Formosa Plastics Corporation, Texas, *et al*.
Civil Action No. 6:09-cv-00061
DEMAND FOR STIPULATED PENALTIES

Dear Sirs:

Pursuant to Paragraph 30 of the Consent Decree entered in the above-referenced matter ("Consent Decree"), the United States demands payment from Formosa Plastics Corporation, Louisiana of stipulated penalties in the amount of $34,825 for violations of certain requirements of the Consent Decree. These violations involve Formosa Plastics Corporation, Louisiana, located in Baton Rouge, Louisiana ("Formosa"). *See* Consent Decree at ¶ 30.

The Consent Decree requires Formosa to undertake enhancements to its Leak Detection and Repair ("LDAR") program. *See id*., Appendix A. The United States and Formosa amended the Consent Decree in March 2013. Under Paragraph 32 of the Consent Decree, Formosa is liable for stipulated penalties of $175 for each component that Formosa failed to timely include in its LDAR program. Formosa has failed to timely include 199 components. Under the terms of the Consent Decree, as described below, the total amount of stipulated penalties due is $34,825.

* * * *

Stipulated Penalties as Calculated under the Terms of the Decree:
Paragraph 32 Penalties

Failure to add existing Covered Equipment to the LDAR Program. Appendix A, Subsection J of this Consent Decree required Formosa to complete an initial LDAR audit of the Louisiana facility by no later than April 29, 2010. Formosa retained ERM Consulting to conduct the audit and it was completed in a timely manner. Mr. Kelly Serio certified in the September 29, 2010, submittal that "all equipment at the Facility that is regulated under a federal, state, or local leak detection and repair program has been identified and included in the Facility's LDAR program."

In the correspondence cited below, Formosa reported that it discovered that a total of 199 existing components in the VCM unit had not been added to the LDAR program within one year of the Date of Lodging.

No. of Components	Source of Information
3 connectors 2 valves	Formosa's letter dated May 29, 2014
47 connectors 15 valves	Formosa's letter dated July 15, 2016
90 connectors 42 valves	Formosa's letter dated August 21, 2017
TOTAL:	**199 components x $175 = $34,825**

* * * *

Under Paragraph 39, payment of $34,825 must be made in accordance with the provisions of Paragraph 9 of the Consent Decree, under which the U.S. Attorney's Office for the Southern District of Texas will issue EFT instructions to Formosa for payment of $34,825.

Under Paragraph 35 of the Consent Decree, Formosa must pay these stipulated penalties within 30 days of receiving this written demand unless it invokes the dispute resolution provisions of the Decree. Paragraph 37 of the Consent Decree provides the terms under which stipulated penalties accrue and when they must be paid during dispute resolution.

The United States is not aware of any basis upon which Formosa may successfully defend the demand made in this letter and, therefore, also requests that Formosa to notify the United States as soon as possible, but no later than 30 days after its receipt of this letter, if it does

not intend to invoke dispute resolution. Upon receipt of that notice, the United States will have the U.S. Attorney's Office prepare the EFT instructions and will arrange to provide these instructions to Formosa.

To expedite the processing of the payment of stipulated penalties, please clearly identify the Civil Action Number and amount of the penalty both on the check, if paying by check, and in the letter accompanying payment by check or wire transfer. Please also send a copy of the letter accompanying the payment to lundelius.diana@epa.gov.

Thank you for your prompt attention to this matter. Please contact Marcia Moncrieffe or me if you have any questions.

Sincerely,

/s/ Scott M. Cernich

Scott M. Cernich
Senior Counsel

cc (via email):
Marcia Moncrieffe
Assistant Regional Counsel
U.S. Environmental Protection Agency
Region 6
Moncrieffe.Marcia@epa.gov

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